Supreme Court of the United States,

DECEMBER TERM—1871—No. 190.

POLICE JURY OF THE PARISH OF TENSAS,

PLAINTIFF IN ERROR,

versus

AUDLEY C. BRITTON ET AL.,

DEFENDANTS IN ERROR.

Statement, Assignment of Errors and Argument.

Abstract or Statement of the Case.

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This suit is brought by defendants in error on the law side of the Court to recover judgment against the Police Jury of the Parish of Tensas on *four hundred and sixty coupons of six dollars each*, payable July 1st, 1870, and cut from the like number of bonds of one hundred dollars each. The coupons are annexed and made a part of the petition, and therefore form a part of the record.

In said petition the following allegation is made the basis of the recovery:

"The aforesaid coupons were attached to four hundred and sixty bonds of one hundred dollars each, dated at

St. Joseph, in said parish of Tensas, on the 29th July, 1869, payable to bearer, in *six, seven, eight, nine, ten, eleven* and *twelve* years after date, with six per cent. coupons attached, issued by said parish, *to fund the debt* of the parish, in accordance with an ordinance passed by the said Police Jury on the 18th day of January, 1869, and according to law, and signed ELI TULLIS president Police Jury, one of which said bonds, being the number 423, is annexed to and made a part of this petition, to show and set forth the character of said bonds aforesaid.".

Record, p. 1.

The bond (No. 423) thus made part of the petition which bears date July 1st 1869, and by the Louisiana practice thus corrects the error in the petition, is signed only by Eli Tullis, styling himself President of the Police Jury, and Reeve Lewis, a clerk of said body.

Record, pp. 1 and 2.

The answer among other things avers that the said supposed ordinance of said Police Jury passed on the 18th of January, 1869, was and is null and void for illegality, and has since been rescinded by the said Police Jury, viz, by an ordinance passed on the 7th day of June, A. D. 1870, and that at the time said supposed bonds and coupons of interest were signed by said Eli Tullis, the said Police Jury was not indebted to said Kennedy and Maxwell, nor to said plaintiffs, nor to any other person or persons from whom said plaintiffs received said bond and coupons, and the same are null and void for want of a consideration and for want of execution in such form as to create a legal obligation on the part of said Police Jury

to pay the same; that it is pretended that said supposed bonds and coupons were given in renewal of certain sight drafts or orders of the Levee Inspector of the parish of Tensas, bearing dates, viz: two dated 17th day of December, A. D. 1860, for $2,500 each, two dated January 10th, A. D. 1861, for $2,500 each, and one 10th January, A. D. 1861, for $500, and that said sight drafts were valid for said amounts and eight per cent. interest thereon, whereas they did not bear any interest and were themselves null and void, because the ordinance under which they were issued, and said Police Jury have not made any provision for the redemption of, nor the paying of the principal and interest of such supposed indebtedness, and because said supposed sight drafts and claims were barred by prescription of five years. that for a like reason, viz: because said supposed ordinance of said Police Jury of January 18, A. D. 1869, made no provision for the payment of principal and interest of the indebtedness proposed to be created by said last mentioned ordinance, and the same was passed in violation of the Act of the Legislature of the State of Louisiana approved on the 29th day of April, A. D. 1853, the same was and is null and void, and the same and the supposed bonds and coupons executed, or purporting to be executed, under the same, are absolutely null and void, and that said last mentioned ordinance conferred no legal or valid authority upon said Tullis, nor any other person, to issue said pretended bonds or coupons of interest, nor to bind said Police Jury of Tensas to pay the said pretended claims of said plaintiffs nor any part thereof. And this defendant further repre-

sents that said ordinance of January 18th, 1849, was obtained by misrepresentation and error induced by said Koontz, by representing that A. P. Marshall, a principal creditor of said parish, would accept said resolution; that said supposed ordinance of said Police Jury of date 18th day of January, 1869, as well as of all said supposed bonds and coupons issued under the same, are also null and void for this, that under the constitution and laws of the State of Louisiana said Police Jury of said parish of Tensas was without right or authority to pass said supposed ordinance of January, 1869, and without right or power to authorize the issuance of said supposed bonds and coupons, and there was, and is, no law authorizing the making or execution of the same. The ordinance is on pages 9 and 10.

The *main* questions or points involved in the lower Court were, therefore:

1st. That the original levee warrants which were executed by officers acting entirely independent of the Police Jury, were extinguished by prescription before the 18th day of January, 1869.

2d. That the Police Jury had no power or authority to order the execution of said bonds and coupons BECAUSE the Legislature had never conferred the power in any form, and moreover they had no power under any circumstances to bind the parish for debts which had ceased to exist, and the fraudulent conduct of Britton & Koontz in procuring said bonds and coupons rendered them null in their hands.

3d. That, even if it be conceded that the Police Jury

had the power to bind the parish for the levee warrants created by other officers, and chargeable to special funds by the substitution of other obligations, the particular ordinance of 18th January, 1869, is and was void as well as the bonds and coupons issued under the same, because the law expressly declares that the Police Jury *shall not have* power to pass such ordinance unless provision is made in the same ordinance for the redemption of such bonds and coupons.

Before calling the attention of the Court to THE ASSIGNMENT OF ERRORS which grow out of the various points charged by the Judge upon the above *points*, the statement of the case would be incomplete without noticing in a few words the general levee laws of Louisiana.

The Spanish Government, while in the possession of Louisiana, conceded to occupants and settlers acquiring title, on the Mississippi and other navigable rivers and bayous, lands fronting on such water courses which then, as now, furnished the ordinary channels of communication between the different parts of the State and the highest alluvial land for settlement, on the express condition that such front occupant should contribute a public highway and maintain a levee on the front of such places. This duty was enforced against the occupant owing it and against his property.

This continued to be the mode of proceeding for the maintenance of the levees and the making of roads in the *alluvial* lands until about A. D. 1848 when a different policy was commenced in reference to alluvial lands in the

district of country above the mouth of Red River and some of the interior parishes.

And it was very proper that there should be a change of policy adopted, even at that late day; for, after the acquisition of Louisiana by the General Government, the public lands were *sold* to individuals or donated to the State of Louisiana for public improvements, as swamp lands, and sold by the State.

In the case of the donation, by the Spanish Government, of lands to proprietors, on condition that the riparian proprietor should repair the roads and keep up the levees, there was no hardship as it was a condition, or in other words, the price of the grant.

In the case of lands *sold* by the United States, the heavy tax upon the front proprietor to build and keep up costly levees on the river, to protect valuable plantations on the bayous in the interior, seemed to violate the principles of the Constitution which prohibited the taking of private property for public use without a compensation previously paid.

Add to this the fact that where the unstable Mississippi river, had once formed a caving bank, in addition to the calamity of losing dwelling, outhouses and machinery, the unfortunate planter was often compelled to build his levee many times the size of the original levee, in height and in cubic contents, in the rear, in order to make its heighth equal to its original on the higher lands on the front, and we have another strong reason why it was important to change the law as to the parishes above Red

River, and through a general system for those parishes throw the heavy burden on all alike.

Prior to this time and while the State proceeded on the Spanish idea, that all front lands were concessions from the government to the reparian owner on condition that such owner should keep the roads and levees in repairs. it was left to the Police Jurors of the parishes to regulate and enforce making repairs of the roads and levees by ordinances in their respective parishes, against the delinquent proprietors. The duties of the police jury were then quite simple and consisted mainly in making and appointing officers to enforce the laws and ordinances of the police jury against those owing the servitude or service. See in general 2 Martin's Dig. of Statues p.586 1 Moreau's Dig. 655 Act 1825 (Feb. 8 1825) 2 Moreau Dig. 241 Bullard & Curry's Dig. 735 et seq. The property of persons neglecting to build their levees was subjected to a privilege and mortgage in favor of the persons employed by the levee inspectors in a summary manner. Bullard & Curry 755 Sec. 93, Act of 1829 approved February 7, 1829 Sec. 30. Cross vs. Haynes 15 ann. 181, 15 A. 552.

In a few of the parishes there were occasionally laws passed, allowing the police jurors to *levy a small definite tax* to aid in works too burdensome to be imposed upon the front proprietor, and such was the law in the parish of Concordia out of which the parish of Tensas was carved.

The authority to the parish of Concordia bordering on Red River, to levy a tax to lighten the burdens and duties imposed on the reparian proprietors, and to aid

through levee commissioners, in the construction and repair of levees, was given by the Act approved 18 Feb. 1841, Acts p. 24. This act allowed a tax of three and five cents per acre on uncultivated and cultivated lands, p. 26. The ordinances of the police jury under the law and a prior statute gave rise to great doubts as to their power to pass them, and the legislature came to their relief and confirmed two ordinances of the police jury of Concordia, regulating the size and mode of laying out the levees, enforcing the duty of the proprietors to repair, and levying a tax and summarily enforcing penalties. See Act 1842 and the recited ordinance of police jury, Act 1842 p. 472 504.

In 1850 the police jury of the parish of Carroll was authorized to lay a levee tax. (Acts 1850 p. 75). *Provided it was assessed on those benefited thereby.* In 1852 the levee district composed of the large and contiguous parishes of Carroll, Madison and Catahoula was formed, and the power of building, making and repairing levees was conferred upon, a board of *levee commissioners* who were authorized to lay on the *alluvial lands* certain specified taxes, Act 1852 p. 234; 1853 p. 44; 1857 p. 35,p. 105 1858 p. 128. In 1859 this important levee district which did *not* embrace Tensas, was authorized to issue *bonds* for the first time. 1859 p. 12. We allude to all of these various acts as matters of history, and in order to show that under the old regime, *when the front proprietor was compelled to build his own levee* and work the roads on the front of his lands, the police juries did not have, nor

even need the powers *to levy a tax for levee purposes.* As occasion required, this power to levy a tax was specially granted in certain cases by the legislature to certain parishes. When it became necessary, the legislature authorized the board of levee commissioners, in one or more of the parishes to borrow money for building levees; always prescribing how. In 1853, in order to prevent the municipal authorities from leaviing their debts for posterity to pay, a law was passed which declared "That police juries of the several parishes of this state, and the constituted authorities of incorporated towns and cities in this state shall *not hereafter have power* to contract any debt or pecuniary liability without fully providing in the ordinance creating the debt, the means of paying, the principal and interest of the debt so contracted." 1853, p. 234, Sec. 1 Rev. stat. 1856 p. 345 Sec. 4. The constitution of the state of 1868 has the same provision for debts over $100,000 see Art. III. In 1860 the police jury of the parish of TENSAS with the *Treasurer of the levee fund,* and *Secretary,* were specially authorized to borrow money on certain bonds under seal, of *not less than* $1000 *nor more than* $10,000, not having more than *five years* to run, to be secured by taxes on land. *See copy of Act annexed to this brief.* In 1868 the levee laws of the state at large were repealed and the parish of TENSAS was incorporated into the FIFTH LEVEE DISTRICT of Louisiana, composed of Union, Moorehouse, Jackson, Madison, Tensas, Concordia, Ouachita, Franklin and Caldwell parishes. In this Act it was made the duty of the new board to cause all proper surveys to be made for levees and other public works and

all levees to be built and repaired, &c. All laws in conflict with the act were repealed. See Acts 1868 p. 83, Sec. 3, 6 and Sec. 9. See Acts 1866 p: 36 Sec. 3 and 8. Act 17, Feb. 1866, also, Act 26, March 1867, 212, 217. These statutes have been construed by the Supreme Court of La., as repealing the previous laws on the subject of the levees See Police Jury of Parish of Jefferson vs. Tardos 22 A. 60.

A review of the laws on the subject of laying taxes to build levees and creating bonds and other indebtedness for like purposes, as will be shown in the proper place, will establish three propositions, viz :

1st. That originally the burden of building and repairing levees was imposed on and enforced against the riparian owner, and the Police Jury required then, as now, a special power even to *levy a tax* to build levees.

2d. That sometimes the duty was confided by the Legislature to one body of men and sometimes to others to lay out, build and repair levees and make levee contracts. In the levee district composed of Catahoula, Madison and Carroll, it was confided to a board of levee commissioners ; in Tensas, to certain officers acting independently of the Police Jury, and with a right to appropriate a special fund, to be raised by taxation. Subsequently, i was confided to a board of public works, Acts 18 8 .p. 83.

3d. In no case did any body of men, whether levee commissioners or police jurors, have the right to bind themselves or their successors and posterity, by contracts to be passed and executed in the future, except by special acts of the Legislature authorizing such contracts in ex-

press terms, and declaring what officers should make them. Thus it is said by the Supreme Court of Louisiana, 23 An., Marionneaux et al. vs. Police Jury, 251 :

"The powers of the police jurors *are limited*, and they " cannot bind the parishes further than they are author- " ized to do so by express law. The power to borrow " money or to issue bonds as a means of raising it has " *not* been conferred on police juries. They have power " to raise money by taxation for the purpose of building " roads and bridges, and when means for the exercise of " the granted power are given in precise terms, no other " means for its exercise or for raising funds can be im- " plied. The case of Emile L. Breaux vs. Parish of Iber- " ville, lately decided, presented the same question, and " we held that the parish of Iberville was not bound on " the notes or bonds issued by the Police Jury for the " purpose of raising funds to build roads and bridges. We " see no reason to depart from our ruling in that case."

In Breaux vs. Police Jury of Iberville the Court say :

"Art. 2966 declares the power of the agent to draw a " promissory note must be express and special. *Such ex-* " *press and special power could only be conferred on the* " *Police Jury or its officers by statute, and no such statute* " *exists in this case.* It seems clear then that the officers who " signed the note in suit had no legal authority to bind " the parish in that form. Such was the doctrine recog- " nized by this Court in Louisiana State Bank vs. Orleans " Navigation Co., 3 An. 294, in which the indorsement " and guaranty of bonds and notes by the First Munici- " pality of New Orleans was drawn in question. And

" this rule is not merely technical. It is in harmony with " the spirit of the Roman law in regard to communities, " the articles of our code above cited having been im- " ported with little change from that system of jurispru- " dence. Domat, part 1, lib. 2, tit. 3. It is in harmony " with the jurisprudence of the United States as settled " by the highest authority. Mr. Kent says, vol. 2, p. 298 : " The modern doctrine is to consider corporations as hav- " ing such powers as are specifically granted by the act of " incorporation or as are necessary for the purpose of car- " rying into effect the powers specially granted, *and as* " *not having any other*. The Supreme Court of the " United States declared this obvious doctrine, and it has " been repeated in the decisions of the State courts. 2 " Cranch, 167 ; 4 Wheaton, 636 ; 4 Peters, 163 ; 13 Pe- " ters, 587 ; 14 Peters, 122 ; 12 Wheaton, 68."

Bearing in mind, therefore, that the Police Jury of the parish of Tensas, as such, were never vested *with power* to make levee contracts under the laws, for that levee district, and only to ordain among others a levee tax which was held as a special fund, not subject to their orders, but placed under the control of the Levee Inspector, Treasurer and Levee Commissioners for said district of Tensas, who had exclusive control of the levees ; that the only authority to execute levee bonds ever conferred on the Police Jury of the parish of Tensas was special, and given to raise money, by the Act of 1860, which our adversaries ignore ; that all the prior levee laws were repealed by the Acts of 1868, long before the ordinance relied on was passed, and that the police juries were prohibited (as we

have shown) in all cases from authorizing a contract without making provision for its payment in the same ordinance, and that Britton and Koontz, were actively and, as we allege, fraudulently engaged in procuring the ordinance, we will proceed to assign the errors complained of, and call the attention of the Court to the same.

Assignment of Errors.

I. *First Assignment of Errors.* The Court erred in the following charge to the Jury:

"Certain warrants, drawn by the Levee Inspector of the parish of Tensas on Treasurer of the Levee Fund, in favor of Kennedy and Maxwell, or order, bearing date the 17th day of December, 1860, and the 10th day of January, 1861, and payable at sight, had been offered in evidence, and thereupon the plaintiffs' counsel requested the Court to charge the jury, "that levee warrants issued in pursuance of the provisions of Act No. 233, approved 16th March, 1848, as amended by Act No. 56, approved 2d March, 1850, are legal and valid obligations of the parish of Tensas."

"And the defendant's counsel having contended, in argument to the jury, that said levee warrants were drawn against a special fund, called the Levee Fund, by officers whose duties were prescribed by law, and who alone had the power to contract and give validity to levee contracts in the parish of Tensas, and that at the date of said ordinance, alleged in the plaintiffs' petition and relied on, the laws on the subject of the levees, and all power over them by such officers, in said parish of Tensas, had been repealed, and the subject transferred to other officers who

had power over the subject, the plaintiffs' counsel asked the Court to charge the jury that "no subsequent laws, passed after the issue of said warrants, can impair or destroy said obligations." And thereupon the said Court charged the jury in both particulars, as requested by plaintiffs' counsel, and the defendant's counsel then and there excepted to each part and to the whole of said charge to the jury.

Proceeding to state in what the ruling is erroneous, as required by this Court, we remark, that the defendants in error declare on the ordinance of the Police Jury of the parish of Tensas, of January 18th, 1869, found in printed Record, pp. 9 and 10, as the basis of the bonds and coupons, and annexed for the purposes of all of the bills of exception, p. 17.

Five of the levee warrants are found on pp. 11 and 12 and are to be referred to in the same way, p. 17.

The bond, one of the series from which the 460 coupons were detached, (pp. 1 and 2), and the 460 coupons, (pp. 49 to 61), are made part of the petition, and hence are *a part of the record*. See also bill of exception, p. 17; also, Nott vs. Brander, 14 L. R., 370, No. 1.

The charge, as given, was not only erroneous in itself, but calculated to mislead the jury.

Under the provisions of the Act of 16th March, 1858, and 2d March 1850, the *Police Jury* had no power to contract for the building of levees. They could not prevent the contracts. The duty of making the levee contracts and issuing the warrants, was confided to another body of men, another board of officers. The only

fund responsible for the payment of these contracts was a levee fund which the Police Jury, it is true, were empowered to levy, but which, when levied was not under its control. Now, especially after the repeal of the old laws by the creation of a new board and a new levee district by the Act of 1868, embracing the parish of Tensas and applying *to all levees*, (1868 pp. 82, 83) it was an error to charge the jury that the warrants under the old laws were the legal and valid obligations of the parish generally. The charge not only involved a question of law, viz. whether the parish as such was bound, or whether it was only a particular fund, or whether the repeal of the laws had not substituted other officers, but it *concluded a question of fact* pleaded in defence, viz: whether the warrants were or were not prescribed, which depended upon the *date* and *maturity*, and *residence* of the *holders* of such warrants, and the Court erred in finding the facts involved for the jury. Aside from the question whether the Police Jury had the power to issue bonds and coupons, payable at a future day, *in the form* adopted in this case, the validity of the *bonds* and *coupons* also depended (according to the argument of counsel for Britton and Koontz) on the question whether or not they were given for an antecedent existing debt for which the Police Jury was bound.

It was therefore error for the Court to charge generally and in that form, that levee warrants issued under said acts were legal and valid obligations of said parish, when they *might* have been issued more than five years previously. The point was made by the defendant in his

answer specially, and it was a very material question of fact which it was not in the province of the Court to decide.

If the levee warrants had been due more than five years, and the holders were not within the exceptions created by any act of Congress, they, said warrants, were prescribed on the 18th day of January, 1869. This was a very material and controlling fact in the case;

FIRST: as to the power of the Police Jury to revive *in any form* the indebtedness on account of the levee warrants extinguished by prescription;

SECOND: as to the right to revive them without conforming to the acts prescribing the mode of creating obligations and contracts;

THIRD: as to the question of misrepresentation in obtaining the ordinance of January 18, 1869, involved in the allegations of the answer and proof.

Again, the charge was calculated to mislead the Jury, as it implied that any change of the charter of a municipal corporation, or the transfer of their duties to other officers, was void, as impairing the obligation of a contract. Whereas the substitution of one municipal officer for another, and the transfer of duties from one bureau to another, is within the power of every Legislature over municipal corporations, and is not illegal, and the Legislature had the right to create the levee districts by the acts of 1868.

II. PLAINTIFF IN ERROR FURTHER ASSIGNS AS ERROR, that said Circuit Court erred in refusing to charge the jury "that as it respects persons domiciled and actually resid-

" ing within the Confederate lines during the war, to " to whom the State courts were open during said period, " and who on account of their citizenship were not enti- " tled to sue in the United States courts, prescription and " statutes of limitation ran according to the laws of said " States where the action should have been brought, and " actions between such persons when the proper time had " elapsed were barred accordingly," and in charging, on " the contrary that " only the time which elapsed from the " date of said levee warrants prior to the 26th day of " January, 1861, could be counted, and then that pres- " cription did not commence to run again until the 20th " day of August, A. D. 1866, and this law was as appli- " cable to citizens actually residing in the so-called Con- " federate States, in the State courts of such so called " Confederate States, within the Confederate lines, as in " the courts of the United States." Rec. p. 8, Bill No. 2. See also p. 14, Bill No. 6. The point could scarcely be more clearly stated.

III. *Third Assignment of Error.* The Court erred in charging the jury, after the case had been given them in charge, " that the plaintiffs were entitled to recover " interest at the rate of five per cent. per annum."

The law of Louisiana is express, that interest on interest cannot be contracted for in an original instrument, nor recovered. To allow a recovery on the coupons would be a virtual abrogation of the law, as nothing more would be required than to attach coupons to the obligation. The form of the contract would thus defeat the statute.

We do not think the laws of other States ought to con-

trol this case, which depends on an express prohibition in a statute. Art. C. C. 1934.

The coupons are given as interest. The Code says: "*Interest upon interest cannot be recovered* unless it be "added to the principal and by *another contract* made a "new debt. *No stipulation to that effect in the original* "*contract is valid.* C. C. 1934. The new contract after "the interest has accrued, has not been made in this case. Compton vs. Compton, 5 An. 620, was a case where the interest was stipulated on the interest notes, and the Court after examining the question at some length, held such stipulation void, and add: "but the plaintiff can recover "*no interest upon the interest notes.*"

IV. *Fourth Assignment of Errors.* The Court also erred in its rulings shown in the following bill of exception, viz.

"No. 4. Be it remembered that on the trial of this cause before the jury, the evidence introduced tending to show that the bonds from which the coupons sued on were detached had been delivered on the surrender of certain levee warrants, payable to Kennedy & Maxwell, five of which said levee warrants are made a part of another bill of exceptions, and to which reference is made to show their tenor and effect, as part of this bill, and it having been contended, in argument, by defendant's counsel, that whether the acts of the Legislature of Louisiana, approved the 17th day of February, A. D. 1866, the 26th day of March, 1867, and the 10th day of September, 1868, had repealed the prior laws on the subject of levees, as it respected the officers acting in said parish of Tensas, or

not, that as the Police Jury of said parish of Tensas had no power to provide for the payment of the building of levees, if at all, except by taxation; and that inasmuch as the general laws of the State required, when any contract was made creating a debt against the parish, generally, provision should be made in the same ordinance for the payment of debt and interest; and that inasmuch as the act of the Legislature of the State of Louisiana, approved the 13th day of March, 1860, (Acts of La. pages 146 to 147) had provided the mode and designated the officers who were to execute the bonds which were to be issued on account of the levee funds, and directed the Police Jury what provision to make for their redemption; and that as the resolution of the said Police Jury, of the 18th day of January, 1869, and said so-called bonds from which said coupons were detached, did not conform in any particulars with the law, either in substance or form, that said resolution of the 18th January, A. D. 1869, and said bonds and the coupons were null and void; and when the Court came to charge said jury, defendant's counsel requested the Court to charge the jury, before they retired to deliberate on their verdict, "*that the said resolution of said Police Jury, which had been offered in evidence in this case, by both plaintiffs and defendant, and referred to in plaintiffs' petition in this case, and which is in these words:*"

"THE STATE OF LOUISIANA.

"*Parish of Tensas.*

"Monday, Jan. 18, 1867.

"At a meeting of the Police Jury held this day, in pursuance of adjournment, were present:

"Eli Tullis, president, from ward No. 3,

"J. V. Sevier, from ward No. 1,

"Johnson Montgomery, from ward No. 2,

"Henry Nichols, from ward No. 4,

"Alfred Fairfax, from ward No. 6.

"There being a quorum present, they proceeded to business, when the following resolution was adopted, viz:

"*Be it Resolved*, That all just claims against the Parish of Tensas be now funded, and that the various creditors of the said parish be called to present, by the first day of July, A. D. 1869, from this date, their claims against the parish of Tensas, to the President of the Police Jury and the Clerk of the Police Jury, and they, after examining the claims and approving them, shall issue to the creditors the bonds of the parish, payable in six, seven, eight, nine, ten, eleven and twelve years from this date, and said bonds shall bear interest at six per cent. per annum, and said interest shall be paid annually; that all claims not presented by the first day of July, A. D. 1869, shall be forever barred.

"*Be it further resolved*, That the Parish Attorney of this parish is hereby instructed not to plead prescription upon any claims against the parish, unless the holder of said claim refuse to accept the terms herein proposed for funding the indebtedness of the parish."

"*Be it further resolved*, That in any case where the President and Clerk of the Police Jury are in doubt about the correctness of any claims that may be presented to them, the same shall be referred to the Board."

"*Be it further resolved*, That the president and clerk of the Police Jury are hereby authorized to purchase bonds, with coupons attached, to be used in funding said indebtedness."

"Ayes—unanimous—five."

"Certified to be a true and correct extract from the Minutes of Police Jury of Parish of Tensas, Louisiana, of 18th January, A. D. 1869."

"Attest 17th February, 1871.

REEVE LEWIS,
Clerk Police Jury."

is void upon its face under the laws of Louisiana, and the supposed bonds and coupons set forth in plaintiffs' petition as executed under the same, are null and void and not warranted by law, and there must be a verdict for defendant"; and thereupon the Court refused said charge, and informed the jury "*that the levee warrants were valid* "*debts against the parish, and that the Police Jury had* "*the power to issue the bonds in question, and had an* "*undoubted right, and it was very proper for them to* "*postpone the indebtedness of the parish on the levee war-* "*rants for six, seven, eight, nine, ten, eleven and twelve* "*years, if they thought the interest of the parish so re-* "*quired;*" to all of which charge of the Judge and to the refusal of the said Court to charge the jury as requested, the defendant, by counsel excepted, &c,

[The last clause of the ordinance evidently was intended to authorize the *printing* of the bonds and coupons.]

It will be seen from this bill, that the Judge had again decided the fact that the levee warrants were valid debts against the parish. Now, when he asserts the legality of the ordinance of 18th January, 1869, funding the parish debts, and the bonds and coupons issued under it, he virtually decides the whole case on the facts and law.

V. *Fifth Assignment of Errors.* The Court erred in charging the jury, at request of counsel of defendants in error, "that the warrants annexed to the depositions of "Reeve Lewis, and surrendered by Britton & Koontz to "the Police Jury, on receiving bonds in lieu thereof, were "not prescribed on the 18th day of January, 1869." the day of the date of the resolution of the Police Jury. Rec., pp 10, 13.

It will be seen by the next bill of exception (No. 6, p. 13 and 14), that Kennedy & Maxwell were citizens of the parish of Tensas.

It has already been seen, that the Judge *a quo* had charged the jury, in effect, that prescription was suspended in Louisiana from the 26th day of January, 1861, to 20th day of August, 1866, as to suits between citizens, as well as to other persons. Rec., p. 8.

We will therefore add some authorities here, which will point out the error, and will be equally applicable to the second point.

The rulings of which we complain cannot be sustained by the decisions of this Court of Hanger vs. Abbott, 5 Wallace, 533; Stewart vs. Levy, 11 Wallace, 244; Stew-

art vs. Kohn, 11 Wallace, 504, 505; and Protector, 13 Wallace, 700.

The levee warrants (being as to debtor and creditor between citizens of the Confederate States, who were bound to sue by reason of their citizenship in the State courts,) were governed by the laws of Louisiana and prescribed on the 18th day of January, 1869, and it was error for the District Judge to charge otherwise.

VI. *Sixth Assignment of Error.* The Court erred in its refusal to charge the jury. "That if Kennedy & Maxwell, through whom plaintiff claims, were either, or both of them, citizens of the State of Louisiana, at the time said levee warrants were issued to them, then they could not transfer said warrants, drawn to their own order by the Levee Inspector, in said parish of Tensas, on the Treasurer of the Levee Fund, so as to authorize said transferrees to sue on said warrants, said Police Jury of the parish of Tensas, in the U. S. Circuit Court, whatever may have been the citizenship of said transferees."

This instruction had an important bearing on the question of prescription. If the parties stood in such relation to each other, that the State Courts were the only ones in which they could sue, and they were within the Confederate lines, as shown, then prescription had run upon the levee warrants, and the ordinance for the new issue of bonds failing in its essential condition, to provide for their redemption, was void on this ground, as well as for want of authority, as we have already shown.

VII. *Seventh Assignment of Error.* The Court erred in refusing to charge. "That the Police Jury of a parish

are without any authority in law to issue bonds or other evidences of debt for a claim against the parish, which has been extinguished by prescription," and in charging the jury that the levee warrants were not prescribed and that the charge requested was not applicable. Rec., p. 14.

VIII. *Eighth Assignment of Error.*

The court also erred in refusing to charge the jury that: "At the date of the sale of the said Levee Warrants offered in evidence, viz; in the years 1860 and 1861, the power to make contracts for the making and building of levees in said parish of Tensas was not vested in said police jury of said parish of Tensas as such, but was entrusted to other officers, and chargeable to a special fund; and the only power ever vested in said police jury to create a debt on account of said parish for levee purposes was the Act of the Legislature of the State, approved March 13th, 1860, [Acts of Louisiana, 1860, pages 146, 147,] and the police jury could not issue bonds to bind said parish generally on an account of the levees and levee contracts in any other form and manner than provided by said Act; that any ordinance of said police jury of said parish of Tensas consolidating the indebtedness created by authorities appointed for the purpose of making contracts for the building of levees, authenticating such contracts, and drawing warrants for the payment thereof on the treasurer of the levee fund, by which said ordinance such indebtedness was to be funded, and the interest capital-

ized and to made bear interest, and such indebtedness was to be postponed for six, seven, eight, nine, ten, eleven and twelve years, was, when axcepted by creditors of such fund, a contract; and such ordinance could be valid to bind the parish generally, if at all, only by conforming to the law, which made it the duty of the police jury to provide in the same ordinance for the payment of debt and interest of the obligation created by such contract, and the ordinance of January 18th, 1869, in question, is also, on this account, void." Rec p. p. 14 and 15,

IX. *Ninth Assignment of Error:*

The court erred in refusing to charge the jury, "That if the jury find that there are coupons sued on this case detached from bonds which have not been shown to be for any prior indebtedness of the parish in any form, nor for any debt created upon the levee fund, then the plaintiffs have not shown, as it respects those bonds, that they were for any antecedent debt, and the plaintiffs cannot recover on the coupons, on the same," and in charging: 'That the police jury of the parish of Tensas were authorized to provide for the payment of the levee warrants by issuing bonds for the same, as has been done in this case, and there being no proof adduced by the defendant that any bonds were issued under the resolution of 18th January, 1869, other than for antecedent debt, the presumption was in favor of plaintiffs until rebutted."

No argument need be addressed to this court to show that the four thousand six hundred bonds and coupons of the police jury are not the same thing as the nine or ten prescribed *warrants* of a levee inspector, and levee com-

missioners. They are different things; different order of contracts, and executed by different officers, and in numbers like locusts.

The *prohibition* to the police jury by the law given against the issuance of the bonds and coupons is absolute: They shall *not have power* to contract any debt or pecuniary liability without fully providing in the ordinance creating the debt, the means of paying the principal and interest of *the debt so contracted.*" Acts 1853, p. 234, Sec.

What are bonds but contracts of debt? What are the coupons but contracts of interest, and a pecuniary liability? Our adversaries sue on these bonds and coupons as the basis of recovery. They discard the levee warrants of the levee inspector; they claim their bonds and coupons as *binding contracts* of the police jury. The question of *power* then arises. Had the police jury the power to make the contract in the form attempted. The law says they *shall not have the power*, except on a certain condition. But on looking into the case presented by the ordinance declared on, we find *the condition on which the power rests is wanting.*

Now, then, when a party makes an ordinance void on its face, the presumption is against the contract made under such void power, and the court erred in assuming the contrary.

X. *Tenth Assignment of errors:*

The court also erred in refusing to charge the jury 'That the police jury of a parish, as such, have no authority in law to issue bonds payable at a future day, with coupons of interest attached, for any purpose, unless specially authorized so to do by statute, and that it is incumbent on

the plaintiff to show special authority to issue the bonds and coupons sued on in this case; that, on failure to show such authority there must be a verdict for defendant." And in refusing to charge the jury; "That the bonds and coupons, issued under said ordinance of the police jury of the parish of Tensas, of January 10th, 1869, one of which said bonds and four hundred and sixty of which said coupons are annexed to, and made part of plaintiffs petition, are null and void on their face, not only on account of their defective execution, but also for want of authority in said police jury of said parish of Tensas to authorize the same to issue, and said Tullis and Reeve Lewis to sign the same, so as to bind said parish of Tensas."

This bill of exception might be considered as involved in the preceding ones, for if this bill be well taken it disposes at once of the other bills of exception.

In the absence of special legislative power delegated to the Police Juries, to issue bonds and coupons, they have no such power. Let us see what the Police Jury have done in this case.

The *five* levee warrants (p. 11) three of which bore only legal interest, that is, five per cent., amounted in principal, as shown by this bill, to $18,341. Interest having been calculated at eight per cent. on these warrants, and amounting to $6,275, is added to the principal and bonds, making $24,616. For these *five warrants*, the Police Jury have authorized the issuing of *two hundred and forty-six* bonds and *two thousand two hundred and fourteen*

coupons, in all *two thousand four hundred and sixty* contracts to replace *five*, and subjecting themselves to the costs of *two thousand four hundred and sixty* suits, instead of five, and in all *four thousand six hundred*, instead of *nine or ten*. Again, these bonds are made payable *to bearer*, and were designed, no doubt, to be used as paper, and circulate as such. This multitude of coupons are the size of small bank notes, and the bonds only equal $100.

This Court has declared that bonds and coupons in the form here adopted have all the qualities and incidents of commercial paper.

White vs. Vermont and Mass. R. R., 21 H., 575, 3 Wallace, 331, 332.

The Supreme Court of Louisiana, in the passage we have cited, have said: "We know of no law which permitted the parish of Natchitoches to issue the bills or notes sued on, and which for a time were circulated as bills of credit, or money." 23 An. 191.

The law gives to Police Juries the power to lay out and make roads. Now, while they have power to levy taxes to pay for building roads they cannot, as we have already seen, issue bonds to raise money for that purpose. "The power to borrow money, or to issue bonds for the purpose of raising it, has not been conferred on Police Juries. They have power to raise money by taxation for the purpose of building roads and bridges, and when the means for the exercise of this *granted power are given in precise terms*, no other means for its exercise, or for raising funds, can be implied." 23 An., 251, 252.

XI. *Eleventh Assignment of Error.* The Court erred in refusing to charge the jury: "That if the jury believes that the said ordinance of the Police Jury of the parish of Tensas, referred to in the plaintiffs' petition, and offered in evidence by the plaintiffs in this case," (being the same resolution of January 18th, 1869, set forth in another bill of exception, and made part of this,) "was procured by the misrepresentation of Geo. W. Koontz, one of the plaintiffs, as set forth in defendant's answer, that then the plaintiffs are not antitled to recover, and the jury should find a verdict for the defendant," and in charging the jury "That, as the plaintiffs had just demands against the Police Jury of the parish of Tensas, at the time said resolution was under discussion, the mere statement that certain other creditors of the parish would (if the resolution should be passed) come in under the resolution, and grant a delay, would not invalidate the resolution or the bonds issued under the same, and that nothing but a fraudulent and corrupt misrepresentation, by which an advantage in the substance of the contract was obtained, would avoid the same."

The bill of exception shows that the resolution of the Police Jury of 18th January, 1869, was obtained through the misrepresentation of Geo. W. Koontz, but for which it would not have passed; but it was shown that after the adjournment of the Police Jury, the president and some of the members of the Police Jury were informed of the misrepresentation. It was argued by counsel for Britton & Koontz, that as some of the members of the Police Jury were informed of the misrepresentation, before the

bonds issued, the misrepresentation was immaterial, and the Judge *a quo* has, we think, unnecessarily certified this inference in the bill.

The Police Jury was a legislative body with limited powers, which, like all other corporations, can act only when in session. After adjournment, notice to a member is no more binding on the corporation, than notice to a member of the Legislature is on the whole body. *Non constat* that the member informed, may not have been detained by sickness or other cause. His absence, or the neglect to get up a resolution to rescind, at the next semi-annual meeting of the Police Jury, would not be a ratification of the fraud. Once fraud, always fraud.

The issuance of the illegal bonds, subsequently, by the ministerial officers of the Police Jury, was not, therefore, a ratification by the Police Jury itself, and they may have been issued as soon as the bonds and coupons were printed, although dated so as to meet the time when it was supposed the other levee warrants would be brought in.

The Court therefore erred in refusing to charge that, if the Jury believed that the ordinance of 18th January, 1869, was procured by misrepresentation, as set forth in defendant's answer, plaintiffs are not entitled to recover, and the Jury should find for the defendant.

The error was then further aggravated when the Judge proceeded to announce that, as *plaintiffs had a just demand against the Police Jury* of the parish of Tensas at the time the said resolution was under discussion, * * * "Nothing but a corrupt misrepresentation, by which advantage in the substance of the contract was obtained, would avoid the same."

This language, coupled with the refusal to charge as requested, must have left upon the minds of the jury the impression that, nothing but a misrepresentation, by which Koontz had obtained a resolution for a larger amount of bonds than the amount of his claim, would avoid the contract.

In fact, the charge denies, that the defence in the answer is a valid one, and finds the validity of the consideration of the bonds as a fact.

Brief of the Argument.

Some authorities and remarks which were prepared before the recent rule of this court was adopted, under each assignment of error, have been permitted to remain, in order to show more clearly, under each, the error compained of. The bills are not logically arranged, but as the *questions* arise under the special laws of a state, it is difficult to bring them clearly to the attention of the court in any other way than has been done.

A review of the bills of exception will show, that

1st. Certain sight drafts were drawn in the years 1860 and 1861 payable to Kennedy & Maxwell, citizens of the parish of Tensas, La., or order, by Chas. B. Snyder, styling himself "Levee Inspector, Tensas Parish," on "R. H. Snyder, Treasurer of the Levee Fund, Tensas Parish, La.," and approved by Bli Tullis and John Bondurant, Commissioners of Ward No. 4. Five of these warrants amounted to $18,341, calculating interest at eight per cent., when they bore only five per cent. up to date of funding, and they amounted to $24,616; [Rec. p. 15, also, p. p. 11 and 12.]

2nd. That after seven or eight years had elapsed from the maturity of the levee warrants, and they were extinguished by prescription, Koonts, of the firm of Britton & Koonts, debts in error by misrepresenting that a large creditor by the name of Marshall, with a valid claim would postpone his claim [as the policejury were anxious that he should do] if the jury would pass an ordinance authorizing the funding of the old levee warrants and issue bonds payable from six to twelve years with coupons attached, obtained the passage of the ordinance of January 18th, 1860, although Marshall, shortly after the adjournment of the police jury informed the president and some members of the police jury that he had not agreed to come in under the ordinance nor accept the bonds.

3d. That no provision was made in the ordinance for the extension of the bonds, coupons and interest which it proposed to authorize and that said bonds, coupons and interest were intended by the ordinance to operate as they matured as general debts of the parish, and not upon a particular fund, as was the case with the levee warrants.

4th. That by means of this management of Koonts, he obtained for his firm in the place of *five* prescribed and valuless levee warrants, drawn by the levee inspector on the treasurer of the levee fund *two thousand four hundred and sixty bonds* and *coupons signed* by the president of the police jury and the clerk; and the *four thousand six hundred bonds and coupons*, (of which the four hundred and sixty coupons sued on form a part, were obtained, judging from the size of the warrants produced for nine or ten of the same sort of levee warrants.

The members of the police jury of a parish are elected by the voters of their respective Wards. Their powers and duties are prescribed by law.

The duty of the levee inspector, who alone had power to make levee contracts for the parish of Tensas, were also, prescribed by law, and consequently, when once appointed, his duties in making contracts were, as a public officer, independent of all others. Act of 1850, page 33, Sec. 2, being an amendment. Sec. 6 of Act 1848.

"*Be it further enacted, &c.*, That the sixth section of the above recited act be amended and re-enacted so as to read as follows: Sec. 6. Be it enacted, &c., That when said survey has been made and the sections marked off, and the cubic yards ascertained, in order to make a secure and permanent levee, *then the inspector shall let out said levee or levees to the lowest bidder, each section as it is numbered and contracted for its completion, after advertising the same, not less than ten or more than thirty days*, in the ward in which said work is to be done, and whenever a levee or sections of a levee shall have been finished according to the contract, a part of which shall always be to set the same in Bermuda grass, *then said inspector shall issue a warrant payable to the contractor, which shall be a legal order upon the treasurer of the levee fund for the amount therein specified;* and that *all contracts* shall be let out by *said inspector* on, or before the first Saturday in October annually."

"Sec. 4. *Be it further enacted, &c.*, That the seventh section of the above recited act, be amended and re-enacted so as to read as follows: Sec. 7. Be it enacted, &c.,

That *said police jury* are hereby *authorized and empowered* to impose, assess and collect an *annual tax ad valerem* upon all the lands in the parish of Tensas, for building and repairing levees on the Mississippi river in said parish, and that said tax, when collected, shall form *a special fund* for levee *purposes alone*, in the parish of Tensas. That said police jury shall annually appoint an *assessor of levee taxes*, who shall make an assessment of *all lands* owned in said parish, and a *roll thereof, specifying* opposite each owner's name, the number of acres of land, *valuation* and *amount of tax assessed*, which each roll shall act as a *legal mortgage upon all lands so assessed*, after the same has been approved by said board of police; that said roll shall be handed over *to a levee tax collector*, to be appointed by and give bonds to the satisfaction of said board, for the faithful performance of his duty, and in case any person shall refuse to pay said tax, said Collector shall proceed to seize and sell the lands assessed in the following manner:

1st. By seizing and giving notice of seizure, notifying the defaulting party to come forward and pay the amount within three days from the service thereof, or the land so assessed will be sold to pay said tax and all cost.

2d. All lands seized under this Act shall be sold at the Courthouse door of said parish, for cash, without the benefit of appraisement, after thirty days clear advertisement in three of the most public places in said parish, to be offered first, in the smallest legal division. If no one bids for such portion, then in larger bodies, until the amount of the tax and cost is bid; and if no person bids

said amount, said Collector shall bid off said land or lands in the name of the parish for levee purposes; provided, however, that the original owner shall have the right to redeem the same, within two years from the date of sale, by paying twenty per cent. upon the amount of purchase."

From these provisions of the statute the Court will see:

Firstly, that the *Levee Inspector* of Tensas was authorized to contract for the building and repairs of the levees, to the exclusion of all other persons; and,

Secondly, that the Police Jury was authorized to levy a TAX ON LANDS, which was to create a special levee fund; that this tax, (differing from the ordinary taxes, as will be shown,) was to be assessed by a special officer, and to be collected by a special levee tax collector, and was thus placed beyond the control of the Police Jury, and against which the Levee Inspector alone could draw, on the approval of the Levee Commissioners.

The *levee warrants*, in the record drawn in 1860 and 1861, were in due form, and drawn by the officer and against the special levee fund allowed by the above legislation in force at that time.

There is no law which allows the president of a Police Jury and the clerk, to bind a parish, by issuing *bonds and coupons*. The law of 1860 will hereafter be called to the attention of the Court.

We will now endeavor to state points of law to be discussed, with reference to the authorities, &c. The nature of the case has caused a reference to some already.

I. *The Court erred in charging the Jury that the levee warrants were not prescribed January 18, 1869. The charge involved a question of fact which he had no right to find, and his conclusions when formed were not warranted by the facts.* Rec. pp. 10, 13, 14.

It is incompatible with a jury trial, that a Judge should charge *positively* what he supposes is established by the facts. The Code of Practice of Louisiana provides, Art. 516: "In his charge, the Judge must limit himself to giving the jury the knowledge of the law applicable to the cause submitted to them, and he shall abstain from saying anything about the facts, or even recapitulating them, so as to exercise any influence on their decision in this respect."

A. The above proposition involves the ruling on the question of the citizenship of Kennedy and Maxwell, payees of the levee warrants, as affecting prescription, shown by the second bill of exception (Rec. pp. 8, 13, 14,) and the ruling of the Judge that prescription, or the statutes of limitation ceased to run as to and between citizens of the so-called Confederate States, residing within Confederate lines during the war. The doctrine is as novel as it is sweeping. The original levee warrants, it has been seen, were issued in favor of Kennedy & Maxwell, citizens of Louisiana residing in Tensas. Their assignees, Britton & Koontz, citizens of the Confederate States, therefore, could not have sued in the courts of the United States during the war. The courts of the State of Louisiana having been open to suitors, as shown by the bill of exception, the Act of Congress of 11th June, 1864, did

not apply and suspend the force of the Louisiana laws as to prescription between these parties.

Stewart vs. Kahn, 11 Wallace, 500.
Hanger vs. Abbott, 6 Wallace, 532.
Proctor, 9 Wallace, 687.

B. It was a grave error, therefore, to charge the jury, that only the period which elapsed from the date of said levee warrants, prior to the 26th January, 1861, could be counted, and then that prescription did not commence to run again until the 20th August, 1866, and this law was as applicable to citizens actually residing in the so-called Confederate States, in the State courts of the so-called Confederate States, within the Confederate lines, as in the courts of the United States.

We cite from the Civil Code of 1825, re-enacted in 1870.

"Art. 3505. Actions on bills of exchange, notes payable to order or bearer, except bank notes, those on all effects negotiable, or transferable by endorsement or delivery, are prescribed by five years, reckoning from the day when these engagements were payable."

Art. 2156. "Obligations are extinguished * * * * * "by prescription, which shall be treated of in a subsequent title."

The law is well settled, as we have previously said, by

the courts of Louisiana, who have carried into effect these provisions of the Civil Code.

Perry vs. Parish of Vermillion, 21 An., 645, 646.
B. Haynes, Liq., vs. Beckman, 6 An. 224.
Bank of Louisiana vs. Williams, 21 An., 121.
Ib. 659; Canal Bank vs. Beard, 16 An. 346.
Dugan vs. Fulton, 14 An., 418.
Norton vs. Sterling, 15 An., 399.
Jacquet vs. Webb, Levert & Co., 22 An., 111.
Chastant vs. Strong, Ib. 410.
Graham, Auditor, vs. Tignor, 23 An. 570.

Hundreds of other cases might be cited, but it is deemed sufficient to cite the preceding. The Code declares such levee warrants prescribed by five years, and the courts follow the law. The *war* certainly, as between citizens of the Confederate States, did not interrupt prescription. Bartley, Johnson & Co. vs. Succession of Johnson, 21 An. 126. This last case (as well as others which we have cited) goes much further than is needed for our case. In view, therefore, of the Civil Code, the Act of Congress of 1864, the decisions of this high Court, and the decisions of the Supreme Court of Louisiana, it is somewhat surprising that the Judge *a quo* should charge the jury that the *prescription* was suspended from the 26th day of January, 1861, to 20th August, 1866, and that "this law was as applicable to citizens actually residing in the so-called Confederate States, in the State courts of the so-called Confederate States, within the Confederate

lines, as in the courts of the United States," (p. 8), and that the said levee warrants were not prescribed.

This error of the Circuit Judge was on a vital point in the case.

1st. Because the Police Jury having the rights of minors only, could not revive by a contract, however formed, a prescribed debt; but,

2d. If it could revive the debt, the resolution or ordinance by which it was sought to be done in this instance for *four thousand six hundred new contracts* to stand in the place of the nine or ten extinguished obligations, this prolific batch of new obligations could not be created except under the conditions prescribed by law, which it is not pretended as we understand to have been followed. Between persons *sui juris* the new contract to revive a debt extinguished by prescription, must be in writing. Act 1858, p. 148, Sec. 4.

Be it further enacted, etc. That hereafter parol evidence shall not be received to prove *any promise* to pay any written obligation when prescription has already run, but in all such cases the *promise to pay* shall be proven by written evidence."

If the Police Jury had the power to make such new contract which we deny, it must, if for no other reason, take its place among contracts creating pecuniary liability, and conform to the law, in regard to its mode of creation, and the prohibition of the statute cannot be contravened.

Prescription extinguishes the debt or in the language of the Civil Code just cited. "*Obligations are extinguished by*. * * *, "prescription which shall be treated of in a subsequent title. "Art. 3494. "The prescription which operates *a release* from debt *discharges the debtor*, by mere silence of the creditor during the time fixed by law from all actions real or personal which might be brought against him."

By the civil law in the administration of affairs, there is a marked distinction between the acts of the owner and the acts of the agent or mandatary. The one binds as proprietor, the other simply manages as agent, and cannot bind his principal to *create or acknowledge* debts beyond the express power granted. "This power must be express and special. * * *"To contract a loan or acknowledge a debt, to draw or endorse bills of exchange and promisory notes." C. C. 2966.

It is shown by the authorities cited that the Police Juries have only the powers of agents. They are in no sense proprietors or sovereigns. 23 A. 235, 236.

Municipal corporations stand in the relation of tutors acting for minors. Siebrecht vs. New Orleans, 12 An. 496.

Their powers being such, they have as little power to renew debts barred by prescription as tutors and administrators, and it is well settled that these last have no such power

Succession of Robt. McAlpin. 14 Ann. 617, 618.

The force of this last decision will be perceived by observing that the account was acknowledged in 1858.

and placed on the tableau or account filed in court. But because it was prescribed at the time of its acknowledgment, it was rejected and struck from the account by the decree.

Succession of Johnson, 4 Ann. 263.

White vs. McDowell, 4 Ann. 543.

In Breaux vs. Parish of Iberville, 23 Ann. 236, the Supreme Court says: "Article 2966 declares that the power of an agent to draw a promisory note must be express and special. *Such express and special power could be conferred on the Police Jury or its officers by statute and no such statute exists in this case.*" The article of the Code 2966, also declares that the power to contract a loan or *acknowledge a debt must also be* express and special, and the decision is equally applicable to the case at bar, which cannot be distinguished in principle from the one decided."

II. The Police Jury of the Parish of Tensas had no power on the 18th day of January 1869, to issue these numberless bond and coupons in any form.

The prior laws on the subject of the liability of the riparian owner, and of the Parish for the building of levees were considered by the Supreme Court of Louisiana to be repealed by the two acts of February 17, 1866. (Acts 1866, p. 34, No, 20,) and acts 1867, p. 213—216.

The point as to the liability of the owner was decided

in the case of the POLICE JURY, PARISH OF JEFFERSON vs. TARDOS. 22 Annual, 58—61.

The point as to the liability of the Parish was settled in the case of Surgi vs. Matthews, decided February 14, 1870, Opinion Book, No. 38, p, 9, not yet reported but in the hands of the reporter.

Whatever may have been thought of the statutes of 1866 and 1867, which were thus considered as repealing or suspending the former levee laws, the act of 1868 undoubtedly did have that effect, Acts 1868, p. 82.

It was entitled "An Act to establish a Board of Public Works for the State of Louisiana and to define the duties of the same."

The act, sec. 3 divided the State into five *levee districts*, and provided : "That fifth District shall consist of the Parishes of Union, Morehouse, Jackson, Carroll, Madison, *Tensas*, Concordia, Ouachita, Franklin and Caldwell." p. 83.

The act gave them power to appoint an Engineer, Secretary and employees, etc., etc. Section 5th enacted: "That it shall be the duty of the Board to cause all proper surveys to be made for *levees* and other public works and *all levees to be built and repaired*, to protect as far as possible the swamp lands from overflow," etc., * * * "All construction and repairs of levees shall be let by contract to the lowest responsible bidder, and no contract shall be awarded unless approved by a majority of the Board."

Sec. 6. *Be it further enacted*, That this act shall take effect from and after its passage, and that *all laws in conflict therewith be and the same are hereby repealed.*"

Four millions of dollars had been raised by the State, for levee purposes, and at this time the State had assumed control of all the levees, and had become bound for the same.

Now when it is considered that the Police Jury never had the power to make the levee contracts, nor to draw the levee warrants, and the former laws on the subject of levees had been repealed, it is incumbent on our adversaries to show some power in the Police Jury to issue bonds and coupons for such extinguished levee warrants, of the levee inspector. And the same not being shown, we deny that the power existed in any form.

If we examine the *nineteen* different *subjects* placed under the control of the Police Jury, we shall not find among them all any one which authorizes them to issue their bonds for obligations for contracts which another set of officers also were authorized to execute and make. Revised Statutes, 1856' p. 408, sec. 18.

Having shown that the Police Jury have no such power, as we have done on another branch of the case, we will only recapitulate the cases which prove this position.

Capmentin vs. Police Jury, Natchitoches, 23 A. 190.

Breaux vs. Parish of Iberville 23 A. 235.

Police Jury vs. Tardos, 22 A. 58.

Edward vs. Bosser Parish, 24. Ann.

Marionneaux vs. Police Jury, 23 A. 251.

III. If the Police Jury of Tensas had had the power to make and issue bonds and coupons in any case, they had not the power to issue them in the form adopted in the ordinance passed, and they and said ordinance declared on are necessarily void.

We have shown that the levee contracts could only be made by the Levee Inspector, and that he alone could draw the levee warrants, which were by law to be drawn against a fund, called the Levee Fund, and created by a tax assessed upon land, and collected from the owners of land, and that the Police Jury, by law, had no agency in making the contracts nor in drawing the levee warrants.

The warrants themselves show three of them out of five bore only legal, that is, five cent. interest. and the NINTH bill of exception shows, that all the warrants were calculated at eight per cent., and that *six thousand three hundred and forty-five* dollars of interest thus calculated was capitalized and made to bear six per cent. interest, which did not bear any interest before, and that three per cent. interest on ten or twelve thousand dollars was thus gratuitously added to the indebtedness shown by the prescribed levee warrants.

Let us now consider the question on the untenable grounds assumed by our adversaries and the Judge, viz: that the levee warrants were not prescribed when they were thus changed from a claim drawn by the Levee Inspector against a particular fund, and multiplied a thousand fold, and made a general debt of the parish, and purporting to operate against all the taxable property and licenses

standing on the State assessment roll for the parish of Tensas.

The question then presents itself, whether the ordinance of the Police Jury declared on the 18th day of January, 1869, adding to the amount called for by the levee warrants, and capitalizing the interest, makes any provision in itself for the payment of this batch of pecuniary liabilities, debt and interest, as required by the said act of 1853, and re-enacted March 15, 1855, Acts 1855, page 326, sec. 4 and 5, and embodied in the Revised Statutes of 1856, p. 345, sections 4 and 5, and of 1870, p. 485, sec. 2448 and 2449.

"The Police Juries of the several parishes," &c., "*shall not hereafter have* POWER *to contract any debt or pecuniary liability* without providing *in the ordinance* creating the debt or pecuniary liability, the *means* of paying the principal and interest so contracted."

An inspection of the ordinance declared on and pleaded, (Rec. pp. 9 and 10,) shows it does not conform to the statute.

Fourth Bill of Exceptions.

Let it be conceded for this purpose only that the Act of 1860 [Acts, p. 146 to 147,] in *pari materia* was still in force and not repealed by the laws cited, and that it applied to the case.

An inspection of the plaintiffs' petition and the bond annexed, and made part thereof, and coupons declared on, shows that the bonds are for only $100 each, and signed by Eli Tullis, president, and the clerk, and the coupons sued on are for six dollars each, and that said bonds are

payable in *six, seven, eight, nine, ten, eleven* and *twelve* years under said ordinance, as alleged in the petition, page 1.

An inspection of the statute of 1860 shows that said Police Jury were without power to pass said ordinance under that Act, and said president was without power to execute said bond and coupons, because said Act empowers the Police Jury to issue only BONDS *not having more than five years to run* from their date, which are to be made *payable* to bearer at one of the *banks in New Orleans*, to be elected fiscal agent, with semi-annual coupons also payable at such bank, and were to be of NOT LESS THAN ONE THOUSAND DOLLARS each, nor more than TEN THOUSAND DOLLARS each :

They were to be signed by the president of the Police Jury :

They were to be countersigned by the TREASURER of the LEVEE FUND and the SECRETARY :

They were to have the seal of the Board affixed, and were to be in the form prescribed, commencing : "Know all men by these presents," &c., Acts 1860, p. 146, annexed to this brief.

This Act of 1860 only contemplated raising money on bonds. Still, the same fundamental principle was presented which had been re-enacted in 1855, as to all municipal corporations, viz :

Sec. 3. "That *in the ordinance* providing for the issuing of said bonds, the Police Jury shall levy an annual *ad valorem* tax upon *all the lands* owned in the parish *subject to levee taxes*, sufficient to pay the interest upon

said bonds; and also *make adequate and legal provision for the payment* of the principal of said bonds when they shall fall due ACCORDING TO EXISTING LAWS." Acts 1860, p. 146, sec. 3.

The question is *not* whether the *old levee warrants* would form the basis of an action against the Police Jury, and whether the Police Jury of Tensas could, in such a suit, be obliged to levy a tax *on land* for their payment, but it is, whether the bonds of $100 each, and coupons of six dollars each, payable in from six to twelve years, are executed in the forms of law, and are binding obligations of the parish. The suit is on the coupons, and the question is, as to the validity of the bonds and coupons. *The Police Jury could not draw the levee warrants nor execute them.* Their only functions in relation to them (the levee warrants) were to levy a *tax on land*, in order to create a special levee fund over which, when ordered to be levied, they had no control, either to *assess*, *collect* or *disburse* such taxes. And even these laws had been repealed.

The bonds in which the levee warrants are funded at a higher rate of interest than the larger number of the warrants (which expressing no rate of interest on their face, can bear only five per cent. interest,) are *new contracts*, as just shown, bearing generally on the whole revenues of the parish. And the contracts funding the old supposed debts, if valid to postpone the principal debt for six or twelve years, would imply the power to postpone the debt for sixty or one hundred years. The ordinance for these new debts, postponing the burdens to the future, does not make any provision for the payment of the bonds

and coupons sued on, as required by the general laws or the Act of 1860, and is, therefore, void.

The bonds pleaded are for only $100 each. The Act of 1860, as already shown, says they shall not be for less than *one thousand* dollars each, nor more than *ten thousand*, in the cases allowed.

If the five levee warrants produced, are average, the whole number of warrants surrendered amounted to only nine, or ten. In the place of these nine claims, or the large bonds mentioned in the Act of 1860, the defendants in error have obtained *four hundred and sixty bonds* and *four thousand one hundred and forty* coupons: total, *four thousand six hundred* obligations, each capable, if valid, of sustaining a separate suit, and pretend that these 4600 obligations, given for prescribed and worthless levee warrants by another set of officers whom no statute recognizes, are not new contracts.

The act of 1860 says the bonds shall have the seal attached, and the form is given of the bond. Acts 1860, p. 146. These bonds have no seal.

The act of 1860 says the bonds shall be countersigned by the Treasurer of the *Levee Fund* and the *Secretary*. These, the basis of the suit, are not countersigned at all. The signatures of the Treasurer and Secretary are entirely wanting, and the President has no more power under the Act to execute the bonds alone, than the Treasurer of the Levee Funds has.

The act of 1860 prohibits the issuance of bonds having a longer period to run than *five* years. The bond made a part of the petition is for six years, and the petition

shows that others have from *six* to *twelve* years to run from date.

The laws requiring the Police Jury to make provision for the payment of their contracts, in the ordinances authorizing them, *are in the interest of the public order*. The Legislature did not intend *to delegate power* to the Police Juries to bind the citizens of their parishes without first compelling them to consider what resources they had with which to meet the debt and to make provision for the final redemption. That was one precaution against burdensome taxation. Another precaution was the publication of an estimate of proposed expenditures thirty days before the meeting of the Police Jury. Phillip's Revised Statutes, 1856, p. 410, Sct. 20. Acts 1847, p. 82, Sec. 82. Rev. Stat. 1869, p. 539, Sec. 2745.

Again the act of 1860 shows that tne Legislature never intended to delegate to a Police Jury power to burden posterity with the debts of the present generation, nor to give them the power to fund debts.

How important these provisions of law are in a country where the Mississippi so often changes its current, and makes miles and miles of the old levee worthless, and occasions expenditures to the utmost of the planters present ability to meet them. If he could postpone the burden, and leave to the future to provide for his debts as well as its own, in how few years will some other Parishes be in the deplorable condition of Tensas? with a crushing debt entailed upon them, with the same necessity of meeting the annual encroachments of the river and the eroding and wearing away of the levees as those who cultivated

the lands twelve years before, had imposed upon them.

The limitation of the delegated power is thus shown to be not only reasonable, but essential to the security of the people, and in this respect, municipal corpo ations are unlike *rail roads, banking, manufacturing companies, etc.*, where a failure of the objects of the corporation is only a forfeiture of the stock.

In a territory subjected to the debts created by its agents, every piece of property is perpetually bound for the payment of the debts, and there is no relief except removal from the place where such parochial or county debt is ever ready to consume not only the products of the soil and industry of man, but the land itself. The Legislature therefore, delegated its power to the Police Jury in *no other form* and to no greater extent than that expressed in the statutes.

There is not a mere want of delegated power because not conferred, but there is an *active and energetic declaration of this legislative will, that the* Police Jury *shall not have this power*, except on the condition prescribed.

In the language of Judge Hoar, in Commonwealth vs. Smith, 10 Allen, p. 448. "To declare that bonds may be issued on certain conditions, is, in effect, to declare that *they shall not be issued in any other manner*." See also 2, Redfield on Railways, 3 Ed., p. 676, note.

The same doctrine has been authoratively enunciated by this Court in the case of Marsh vs. Fulton County, 10 Wal., 683.

"This is not a case," this Court says, "where the "party executing the instruments possessed a general

" capacity to contract, and where the instruments might " for such reason be taken without special inquiry into " their validity. It is a case where the power to contract " never existed where the instrument might with equal " authority have been issued by any other citizen of the " county. *It is* a case, too, where the holder was bound " to look to the action of the officers of the county and " ascertain whether the law had been so far followed by " them as to justify the issue of the bonds."

See case *in extenso*. 10 Wal.. 676. Louisiana State Bank vs. Orleans Navigation Company, 3 Ann. Rep. 309. Pearce vs. Madison and Ind. R. R. 21, Howard 443.

In the case already cited, 23 Ann., 234, Breaux vs. the Parish of Iberville, after showing the power to issue bonds has been granted by the Legislature, to Police Juries only in certain special cases, the Court says: "The issuing and putting in circulation of bonds or other instruments cr ating obligations against a Parish are the exercise of *an important, not to say a dangerous power, and are certainly not given to Police Juries* by the general laws organizing those bodies. For parochial purposes they are authorized to lay taxes and they are prohibited. (Rev. Stats., p. 411, Sec. 23,) from contracting a debt or pecuniary liability without fully providing in the ordinance creating the debt, the means of paying principal and interest." Breaux vs. Parish of Iberville, 23 Ann. 234.

"The powers of Police Jurors are limited, and they cannot bind the Parish further than they are authorized

to do so by express law," Marionneaux vs. Police Jury, 23 Ann., 251.

This last case also asserts, that when the means for the exercise of a granted power are given in precise terms no other means for its exercise, or for raising funds can be implied."

IV. The Court also erred in refusing to charge the jury, that if they believed that the ordinance of the Police Jury of January 28, 1869, was procured by the misrepresentation of George W. Koontz, one of the plaintiffs, as set forth in defendant's answer, the plaintiffs are not entitled to recover; and in affirming that said Britton & Koontz had just demands against the Police Jury at the time said resolution was under discussion and after the preceding positive refusal, mistifying the jury, after denying the defence in the answer, by a subsequent declaration that nothing but a *fraudulent and corrupt misrepresentation*, by which an advantage in the *substance* of the contract was obtained, would avoid the same." Rec. p. 18.

The proof showed that the ordinance would not have been passed but for the misrepresentations of Koontz as to the large debt of A. D. Marshall.

The effect of misrepresentation or fraud is to vitiate all contracts and render them valueless in the hands of those who have used the deceit.

The above charge was, therefore, not only erroneous in affirming again a fact as established, which had not been established, but on a question of law in declaring that the erroneous moving cause operating on the Police Jury,

and which had been induced by fraud, did not vitiate the contracts obtained by such fraudulent misrepresentation.

It is evident that the defendants in error would not have made the fraudulent misrepresentation [which they have not had the hardihood to deny, although they were notified by the answer that the proof would be offered,] if they had not supposed they would gain some advantage thereby. The law deprives them of their advantage and leaves them their remedy on their prescribed warrants. Fraud invalidates contracts, C. C. 1813. "The error" [induced by fraud] "must be on a material part of the contract, that is to say, such part as may reasonably be presumed to have influenced the party making it; but *it need not be the principal cause of the contract, as it must be in the case of simple error without artifice.*" C. C. Art. 1841, No. 2. "The artifice must be designed to obtain *either an unjust advantage* to the party for whose benefit the artifice is carried on, *or a loss or inconvenience to him* against whom it is practiced, although attended with advantage to no one." No. 7. Britton & Koontz obtained the substitution of 4600 bonds and coupons, capitalizing interest and purporting to operate against all the taxable property of the parish, in the place of nine or ten extinguished levee warrants which originally were only chargeable to the levee fund, which was raised by a tax on land.

V. The Court also erred in charging the Jury that the coupons of interest, notwithstanding the express pro-

hibition of the Civil Code of Louisiana, bore interest from the commencement of the suit. Of course, it is needless to consider the proposition, if any of the preceding propositions be true.

We cited the textnal provision of the Civil Code on this proposition in the assignment of errors, but reproduce it here with citations from the Code of Practice, as it seems to us that the *special legislation of Louisiana* places the case on ground very different from that of the other States."

Until 1839, the 554th article of the Code of Practice declared that "No interest shall be allowed on accounts or unliquidated claims."

Article 553 C. P., re-enacted in 1870: "Interest shall not be allowed by the judgment, unless the same *have* been expressly claimed, *and then only in such cases in which the law permits such interest to be stipulated.*"

Civil Code, Art. 1934: "Interest upon INTEREST CANNOT BE RECOVERED, unless it be added to the principal, *and, by another contract,* made a new debt. *No stipulation* to that effect in the *original contract is valid.*"

In the case of Compton vs. Compton, 6 An. 620, the Supreme Court of Louisiana, having under consideration certain *interest notes on which interest was stipulated,* said: "The conventional interest stipulated in the notes given for the capital of the price may be recovered and the interest notes remain valid; *but the plaintiff can recover no interest upon the interest notes.*" The Court thus literally enforced the article, which says interest on interest *shall not be recovered.*

The Code of Practice and previous legislation cited show the force of the article of the Civil Code, which may perhaps have had its reasons in the opposition of the common law to usury.

We remark in regard to Compton vs. Compton, that, if interest notes or coupons can lawfully bear legal interest after maturity, it is manifest that it cannot render them unlawful to stipulate on the face of the same that they should bear such legal interest after maturity: for, to stipulate that which is lawful can never be unlawful. The decision of the Supreme Court of Louisiana, therefore, is in point, and was a simple enforcement of the language of the Code.

VI. The charge of the Judge that *inasmuch as Britton & Koontz had just claims against the parish*, it was right and proper for them to issue bonds for the same having six, seven, eight, nine, ten, eleven and twelve years to run, if they thought it the interest of the parish was also based upon an utter misapprehension of the powers of the Police Juries, and especially of the Police Jury of the parish of Tensas, where the legislation had been made to conform to the other levee districts.

An ordinary or general debt of the parish operates alike upon *all objects* of State taxation. The tax in a levee district for levee purposes binds only the *lands benefitted by the levees.* When, therefore, the special debts of the alluvial land owners are assumed by the parish generally, it binds all objects of taxation. The merchant who transacts his business in a rented store in St, Joseph is not

bound to pay for the levees which give value to the plantation in the interior protected from overflow by them, but he is bound to pay his license on his profession, and assessment upon capital for the debts of the parish generally. So of all other objects of taxation, such as horses and cattle, carriages and vehicles, shares of stock, money, capital in commerce or business, etc., etc., which are subject to the parish tax. The parish tax, by express law, *is always* levied by an ordinance declaring what percentage shall be collected on the State tax, and when collected it goes into the parish treasury as a *general* fund for the payment of all debts. See Objects of taxation for general purposes, Act of 1869, pp. 146, 147; Acts 1871, pp. 104, 105.

"In levying parish taxes the Police Juries shall levy an "uniform *per centum* on *every species of property, trade* "or *profession* on which the State assesses a tax."

Acts 1847, p. 82, sec. 5, proviso, and sec. 2744, p. 539, Ray's Rev. Stat. (1870).

Templeton vs. Levee Commissioners, 16 An. 118.

Now, when we consider that the laws in regard to the parish of Tensas were the same as to the mode of contracting for and making levees, as in the large levee district of Catahoula, Madison and Carroll, we find a still greater reason to preserve the distribution of power which the law-maker had established. *What power had been given to the Levee Inspector and Levee Commissioners* had not been subsequently conferred on the Police Jury. This will be better understood by further examining the system of levee laws which were in force above the mouth

of Red River. The Act of 1852, p, 234, forming the levee district of Carroll, Madison and Catahoula, is in *pari materia*. A board of levee commissioners laid out the levee wards, ordained the taxes, and appointed the levee inspectors, just as the Police Jury of Tensas was authorized to do. Acts 1852, p. 236, sec. 7; 1848, p. 159, sec. 2. Their levee inspectors were alike authorized to make contracts for building levees, Acts 1850, p, 38, sec 3; Acts 1852, p. 236, sec. 19. The special fund was created in the same manner *on the lands* for the building of the levees, etc., Act 1852, p. 234, sec. 2; p. 235, section 8; Acts 1848, p. 160, sec. 160. Now, when in 1861 the levee district was subdivided, and part of Carroll was made to form one levee district, and the contiguous parish of Madison was made to form another, they and Tensas all stood on the same footing as to the powers of the Police Jury as to levee contracts.

The levee inspectors made contracts entirely independent of the police jury or board of levee commissioners, (Acts 1861, p. 110,) for alluvial lands of Carroll, and (1861, p. 118] for Madison parish. Their appointment by the Police Jury or Levee board did not enable the Police Jury any more to control their action, than does the appointment of a Judge by an executive and confirmation by a senate authorize them to revise the judgments of such Judge. Their powers did not depend on the mode of appointment whether appointed by a board of levee commissioners, as in the large levee district and in Carroll, or by the Police Jury of Madison on the subdivision, but upon the State laws which authorized their appointment.

As the Police Jury of Tensas had no power to make the *levee warrants*; as their whole duty towards them was to order annually a levee tax on land which formed a fund entirely independent of their control either as to its collection or disbursement, and as the Legislature had in one instance only, conferred on that Police Jury the power to issue bonds, and then only on condition that said bonds should not have over *five years* to run, and that they should not be in sums of less than one *thousand* dollars, and that in the ordinance providing for the issuance of said bonds, the Police Jury should levy an annual ad valorem tax upon all the lands owned in the parish, subject to levee taxes, sufficient to pay the interest upon the bonds and make adequate and legal provision for the payment of the principal of said bonds when they should fall due, *according to existing laws;* and as the levee warrants held by Britton and Koontz were then prescribed and worthless, it seems to us an extraordinary charge. It told the jury that the Police Jury had power to do what the lawgiver said they should *not* have power to do. Nay, more, it informed the jury that it was right and proper for an agent to renew a debt barred by prescription, directly in opposition to Art. 2966 of the Civil Code.

The defendants in error relied in the Court below, upon the case of Moran vs. Commissioner of Miami county. 2 Black, 722. But that case was one of an innocent holder, and the bonds recited a state of facts which if true, authorized the issuance of the same with coupons, by the County. Here one of the defendants in error

procurd the ordinance from a body having *no authority* to issue the bonds and coupons for levee contracts, and, as repeated statutes expressly declare, no power to make a contract, in any case, without making special provision in the ordinance itself, for the redemption, principal and interest, of said contract, which condition, a *sine qua non*, was not complied with.

The case of Baldwin vs. Hale, 1 Wal. 223, was also cited by defendants in error. It decides that when a city *has power* to borrow money on a vote of two-thirds of the electors, and issues its bonds accordingly, it is not necessary for plaintiff to aver in a suit on the bonds such two-thirds vote, which will be presumed until the contrary is shown.

In this case there is no question of the burden of proof, for the defendants in error plead the ordinance of 18th January 1869, which they procured, and its production by them and the plaintiff in error makes the proof which was wanting in Baldwin vs. Hale.

The case therefore is governed by the rule settled in the case of Marsh vs. Fulton Co. 10 Wal. 676, already cited.

The law of Illinois declared that, "No subscription shall be made or purchase bonds issued by any county, unless a majority of the qualified voters of such county * * * * shall vote for the same." And the law further requires that the notices for calling the election shall specify the company in which the stock is proposed to be

subcribed." 10 Wal. 682, which we again cite to bring in juxta position.

The law of Louisiana gives no general power to Police Juries to issue bonds, and in cases where they would be authorized to contract, it is declared they SHALL NOT HAVE POWER to contract *any* debt or pecuniary liabilities without *fully providing in the ordinance creating the debt*, the means for paying the *principal and interest of the debt so contracted.* The language of this Court, in Marsh vs. Fulton county is controlling. It is, "This is not a case where a party executing the instrument possessed a general capacity to contract, and where the instruments might for such reason be taken without special inquiry into their validity. It is a case where the power of contract never existed—where the instruments might with equal authority have been issued by any other citizen of the county. It is a case too *where the holder was bound to look to the action of the officers of the county, and ascertain whether the law had so far been followed by them as to justify the issue of the bonds.* The authority to contract must exist before any protection as an innocent purchaser can be claimed by the holder. This law, even as respects commercial paper alleged to have been issued under a delegated authority, is stated in the *Floyd Acceptances.* In speaking of notes and bills issued or accepted by an agent acting under a general or special power, must at his peril see that the paper on which he relies comes within the power under which the agent acts. And this applies to every person who takes the paper afterwards: for it is to be kept in mind that the

protection which commercial usage throws around negotiable paper cannot be used to establish the authority by which it originally issued." 10 Wal. 683.

In the same case the Court says that persons having no authority to make the contract cannot ratify the same.

"It would be absurd to say that they could, without such vote, by simple expression of approval, or in some other indirect way give validity to acts when they were directly prohibited by statute, from doing those acts until after such vote was had. That would be equivalent to saying that an agent not having the power to do a particular act for his principal could give validity to such act by its indirect recognition." 10 Wal. 684.

The decisions of the Courts of Louisiana have been uniform, that Police Juries have no power to issue bonds and coupons, as we have already shown by citations of three decisions.

The *Police Jury* of the Parish of Tensas had no power, it being vested in the Levee Inspector and Commissioner to make levee contracts at the time the *levee warrants* were issued, in 1860 and in 1869, when the ordinance was passed, under which the defendants in error claim, the levee laws were repealed. That Police Jury was never authorized to issue bonds and coupons under any circumstances, except certain large bonds to be signed by certain other officers, and executed under seal, and to be negotiated through some bank, to raise money by the Act of 1860, p. 146.

We do not understand our adversaries to claim under this act, for there has been, as we have shown, no compli-

ance with its terms, in any respect, in regard to the bonds and coupons held by the defendant in error, and the legislature directed in that act, that those bonds should be secured (by provision in the ordinance allowing them) by taxes on lands, and the bonds and coupons held by the defendants in error would be, if valid, general debts of the Parish, and operate against all objects of taxation.

The case involves a large amount, which depends upon questions raised in this case.

By the settled law of Louisiana, the levee warrants had become prescribed at the date of the ordinance of the Police Jury, July 18th, 1859, and it seems to us the burden is upon our adversaries to show by what law the Police Jury of the Parish of Tensas, under the special legislation for that Parish, had authority to make these four thousand six hundred new contracts to operate upon other revenues, and in what manner they complied with such law, and also to justify the various rulings of the Judge a quo, in the bills of exception of which we complain.

GEO. W. RACE,
E. T. MERRICK,
Counsels for Plaintiffs in error.

Copy of Act, 1860, p. 146.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That the Police Jury of the Parish of Tensas are hereby authorized and empowered to issue their bonds for a sum not to exceed two hundred thousand

dollars, *not having more than five years to run* from the date of said bonds, bearing interest at the rate of *eight per cent.* per annum from the date thereof, payable to the bearer at one of the *Banks in the City of New Orleans*, which may be elected as the fiscal agent of the said Police Jury; said interest shall be paid semi-annually at such Bank, and interest coupons shall be attached to each bond, payable likewise at such Bank; the bonds issued shall be in sums of *not less than one thousand* nor more than *ten thousand dollars* each, and shall be signed by the *President of said Police Jury*, countersigned by the *Treasurer of the Levee Fund* of said Board of Police, and the *Secretary* thereof, and have attached thereto the seal of *said Board;* which bonds shall be in the following form:

Know all men by these presents: That the Board of Police of the Parish of Tensas, acknowledge to be indebted to the bearer hereof in the sum of ——— dollars, which sum the *Board of Police* promises to pay in current money of the United States, to the bearer hereof, at ——— Bank ——— of New Orleans, in ——— years from the date hereof; and also to pay an interest at the rate of eight per cent. per annum, semi-annually, at said Bank in the City of New Orleans

{ L. S. } ———————, President.

Countersigned, ———————, Treasurer.

———————, Secretary.

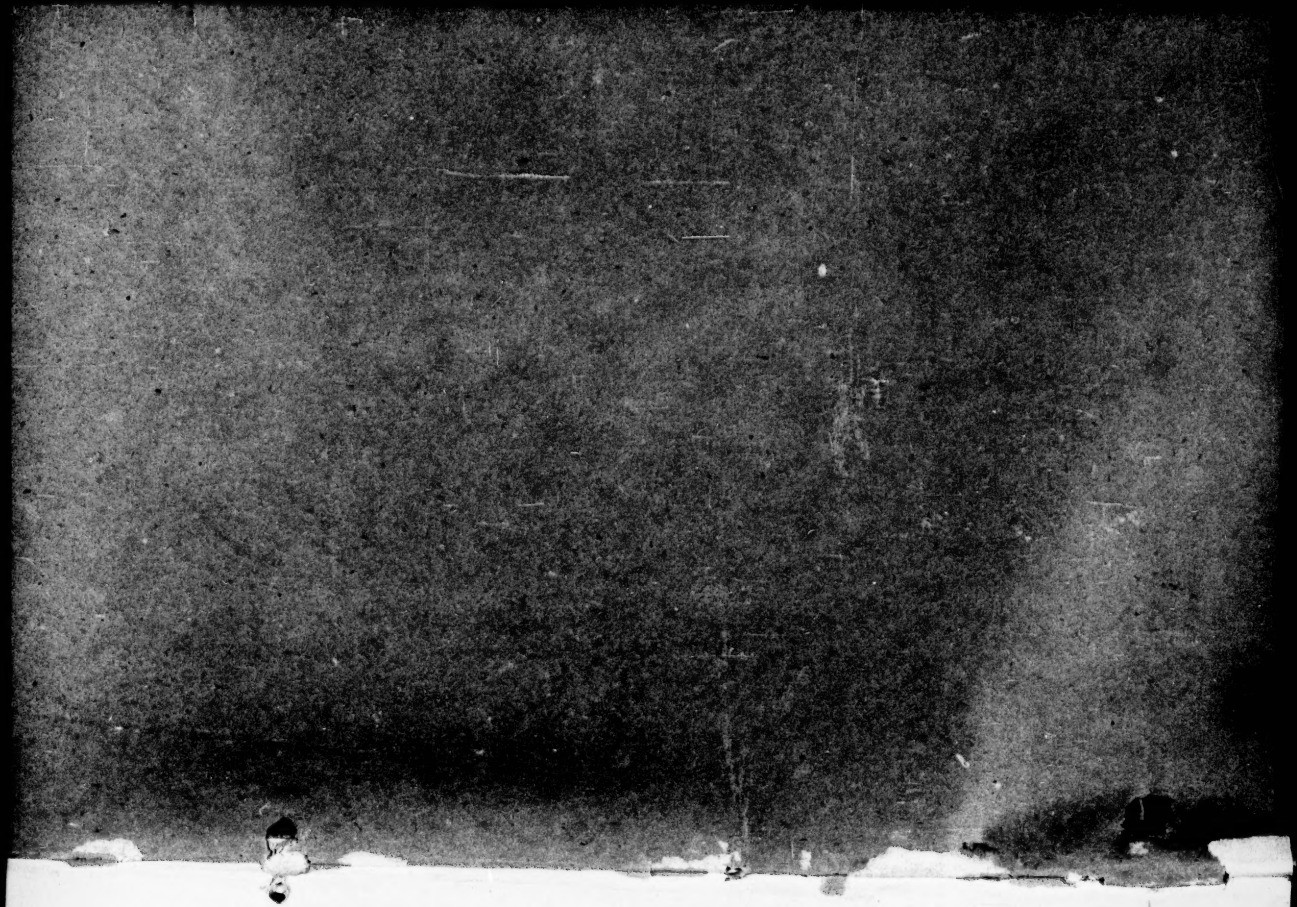
Said bonds are to be issued *under the following condi-*

tions and stipulations: Said Board shall, at a regular meeting, or special meeting called for the purpose, *elect* one of the Banks located in the City of New Orleans, as the fiscal agent of said Board, to act as such during the pleasure of said Board, or until said fiscal agent resigns.

SEC. 2. *Be it further enacted, etc.,* That all bonds issued by said Board of Police, under this Act, *shall be registered by the Secretary of the Board,* in a register kept for that purpose, giving the dates and amounts of said bonds, and shall take the receipts of any person, corporation, or banking house, *which may be selected to negotiate said bonds,* as may be regulated by an ordinance of said Board, and *the proceeds of all bonds negotiated shall be deposited with such fiscal agent as said Board may elect, to the credit of the Treasurer of the Levee Fund of said Board of Police,* to be drawn for by him under such regulations as said Board may ordain, a copy of which regulations shall be filed with such fiscal agent, signed by the President, Treasurer and Secretary of said Board, with seal thereto affixed.

SEC. 3. *Be it further enacted, etc.,* That in the ordinance providing for the *issuing of said bonds, the Police Jury shall levy an annual ad valorem tax upon all the lands owned in the parish subject to levee taxes, sufficient to pay the interest upon said bonds; and also make adequate and legal provision for the payment of the principal of said bonds when they shall fall due, according to existing laws.*

SEC. 4. *Be it further enacted, etc.,* That this Act shall take effect from and after its passage.



Supreme Court of the United States.

PARISH OF TENSAS
vs.
BULLON & KOONTZ.

Dec T. 1872
No 190

SUPPLEMENTAL BRIEF.

The following additional authorities are cited to show that the Police Jury were without authority to issue the 4600 bonds and coupons.

Thomas vs. City of Richmond, 12 Wal. 356.

Overseers of Norwich vs. Overseers of New Berlin, 18 Johns. 386.

Loker vs. Brooklin, 13 Pick., 348—349.

Mayor of Albany vs. Cunliff, 2 Comstock, 165.

The effect of the resolution of 18th January, 1869, (it has been shown by referance to the laws,) would be to transfer the burden from *the land owner* to all other objects of taxation, including licenses, income, etc. On this point see Cuyler vs. Trustees Rochester, 12, Wendell 166, 167.

Hodges vs. City of Buffalo, 2 Denio 110.

Halstead vs. The Mayor of New York, 3 Comstock, 436–8.

Stetson vs. Kempton, 13 Mass., 272.

Dill vs. Wareham, 7 Metcalf, 444.

Cornell vs. Guilford, 1 Denio, 511.

See also *Dillon's Treatise on Municipal Corporations*, p. 374, sec. 381, p. 382, sec. 387, p. 149, sec. 108.

Chas. W. Race +
E. T. Merrick counsel
for Defts in error

Supreme Court of the United States.

POLICE JURY OF PARISH OF TENSAS,

vs.

AUDLEY C. BRITTON, ET AL.

Defendants in Error.

Supreme Court of the United States.

POLICE JURY OF PARISH OF TENSAS,

vs.

AUDLEY C. BRITTON, ET AL.

Defendants in Error.

Reply to Brief of Defendants in Error:

1. The defendants in error, through inadvertence (no doubt,) have omitted in summing up the grounds of defence to the action, the one contained in the amended answer, that the Police Jury of Tensas were without power or authority to pass the Ordinance of 18th January, 1869, and the bonds and coupons under it; and there is no law authorising the execution of the same.

2. Counsel for Plaintiff and defendants are agreed that the *original Levee Warrants* were executed by officers who derived their *power* from the *Act of the legislature*, and therefore were independent of the Police Jury: Defts'. brief, p. 4.

3. They only differ in regard to the consequences which flow from the power conferred by the legislature.

Defendants infer that these *officers* created a general debt against the parish, which was under the control of the Police Jury, and bound all the objects of taxation, and might be renewed by the Police Jury, without observing the forms of law.

Plaintiff in error contends that the power vested in the Levee *inspector* and levee *commissioners* by the legislature to make contracts to be paid out of a special *tax on the lands* protected by the levees was not vested in the police jury, and that when the police jury, who were not by law charged with the duty, undertook to make these nine or ten levee warrants into four thousand six hundred contracts capitalizing interest at a higher rate to operate as debts against the people and licenses, and all other objects and sources of revenue of the parish, they contracted debts which could only be created by some law authorising their creation, and conforming to the positive laws, which declared the police jury should *not have power* to create such debts, without providing in the ordinance for payment of principal and interest.

4. That bills of exception make all the facts they certify a part of the record: that it is useless and unnecessary to reiterate in each bill all the facts of the case; that a court looks to the *whole* record to ascertain whether there is error, and in this special case the facts certified in one bill of exceptions are certified for each and all.

5. That the issue is made by the answer that Kennedy and Maxwell, payers of the levee warrants, were citizens of the Parish of Tensas—(Rec. p. 4,) and that when the testimony tended to show that they were levee contracts, and *resided in the parish of Tensas* and State of Louisiana, the charge asked for, as to prescription, was relevant, especially as defendants in error allege themselves to be citizens of Mississippi, (p. 1,) and as the defendants insist no proof to show that they resided elsewhere than in the Confederate lines during the war, and no argument to the contrary was offered to the jury, as the record shows. So long as the warrants payable to Kennedy & Maxwell were the only evidences of debt against the lands protected, no suit could be commenced on them elsewhere than the State Courts of Louisiana.

Thus, if the warrants were barred by the prescription of the State laws, on the 18th day of January, 1869, as undoubtedly they were, then the charge asked for was *material*, and the court erred in refusing it, and in taking from the jury the right to pass upon this testimony.

The materiality of the erroneous charge on this point is the more apparent when we consider that four thousand six hundred contracts which our adversaries contend are valid, are substituted for nine or ten invalid ones, which were extinguished by prescription, and on which no action could be maintained. *The fact* that *these alleged contracts* are *sued on* instead of *the levee warrants*, is sufficient proof that our adversaries consider they have gained something by the exchange of the worthless for what they deem good.

6. Prior to the repealing Statutes of 1866, 1867, 1868 and the Acts subsequent thereto, the *levee inspector* and levee commissioners, by express statutory laws, had the power to make levee contracts for the territory of Tensas, and the *Police Jury* of that parish did not have that power.

The only power the Police Jury had was to levy by ordinance a special tax on *land alone* to create a levee fund which was placed under the control of other officers, and which they were not permitted to touch, and there was no law authorizing the police jury to create levee obligations save the Act of 1860, which our learned adversaries repudiate, no doubt because its precepts have been disregarded. When was it ever before held that the *repeal of all laws* on the subject conferred *power to do that which could not have been done before the repeal?*

7. The authorites cited from New York, Illinois, and other common law countries in regard to cities, to the effect that if their powers are not limited, they have the same power as private persons are not applicable here. For the reasons that the civil laws have declared that corporations only have the rights of minors and the powers of police juries and other municipal corporations, are expressly limited by law, and they cannot contract debts except upon a condition which is conceded by the course of the argument to be wanting in the present case.

8. The case of Surgi vs. Matthews, and the police of Pointe Coupee, not yet reported, was appealed by Surgi.

The lower court had rendered a judgment of nonsuit for misjoinder, as to the police jury, and the *latter did not appeal.* Hence, the most favorable judgment to them which the Supreme Court could render was one of affirmance.

There was final judgment in favor of Mrs. Matthews, and a reservation to the plaintiff to *sue the Board of Public Works*, or against any corporation or person other than the defendant.

The decision of the Supreme Court denies the right of the police jury to make the levee contract, and affirms the Tardos decision, that the acts of 1866, 1867, and 1868, suspend the previous laws laying the burden on front proprietors and it concludes as stated in defendants brief, p. 8. "And for the reasons stated in that decision, "(the Tardos case), we sustain the decision of the lower "court in the present case."

In Pointe Coupee and the parishes below Red river, with perhaps a few exceptions, the levees until 1866, 1867 and 1868, were kept up at the cost of riparian owner, as the writer of this well knows to his cost. The creation of a Board of Public Works and a repeal of prior laws could not be less effective in the parishes where the construction and maintainance of the levees were committed to particular officers by whatever name they might be called, whether a board of levee commissioners or levee inspectors, for their functions were directly in the way of those conferred on the Board of Public Works, and the present gigantic levee corporation.

9. It is contended by the defendants counsel that the recognition of a prescribed debt, is not the creation of a new one. The *cause* or *consideration* for or sufficient to support a contract, may exist, but if the *contract* be not entered into there is nothing of which the court can take judicial cognizance. But such consideration between persons *sui juris* may, by pursuing the forms of law. be made the basis of a new contract which a court of justice can enforce. But the consideration, though a "debt," in *foro conscientiæ* and perpetuated in the new and valid *contract* based thereon, is not the *same debt* as when clothed with the forms of law, for one can be enforced and the other not, and the argument has deceived the learned counsel by its speciousness. For a *legal* debt and a merely *moral* debt are different things.

The act of 1858, p 148, requires the new promise to be written where the original and extinguished one was in writing and without the writing there is no obligation.

It is contended that, although the *civil obligation* is so far *extinguished* by prescription, that it cannot be enforced by an *action*, and that although it only exists as a natural obligation, binding merely in conscience, still it may be used by way of compensation to bar an unprescribed debt.

If, by this, counsel merely mean to assert where there are two subsisting valid debts which have extinguished each other, by compensation that the subsequent prescription of one does not prevent its being pleaded in compensation of the other, is true. for compensation as well as

prescription, extinguish debts, and as the extinguished compensated debt is not revived by the prescription of the other debt which was also destroyed by compensation *in toto* or *pro tanto*, lapse of time cannot prevent the pleading of the bar. C. C., 2203, 2204. *Lapse of time cannot revive an extinguished debt.* This is all that the authorities cited by our adversaries mean.

But the proposition, where A holds a note prescribed by 5, 10, 20 or 30 years against B, and the latter afterwards acquires a note just matured against A, that A can plead the ancient note against the new note held by B, is not supported by authority. Compensation can only take place where the two debts "exist simultaneously," and "are equally liquidated and *demandable.*" C. C., 2204, 2205; or as the Pandects have it, Quaecunque per exceptionem perimi possunt, in compensationem non venuint. Dig. XVI, lex. 14; Tit. II; Troplong Prescription, No. 34; Merlin Compensation, sec. II, No. IX; Zachariae, Part Second, Book I, sec. 326, No. 3; Toul. vol. 6, No. 389 ("Contrats" No. 389).

A debt *extinguished* by prescription does not *exist* to bar subsequently acquired valid claims by the other party.

10. It is, therefore, difficult to perceive how these arguments avoid the fair intendment of the statute which withholds all power from the police jury to CONTRACT *any* debt or *pecuniary liability* without providing in the ordinance creating *the debt or pecuniary liability*, the means of paying the principal and interest *so contracted.*

Did the *police jury* attempt to *contract* a pecuniary liability? Did they substitute bonds for interest by capitalizing principal and interest? Did they promise to pay interest at another rate where they had never before promised to pay either principal or interest? Did they ignore the provisions of the act of 1860, *in pari materia*, and give bonds and coupons to run from 6 to 12 years, and multiply nine or ten extinguished obligations executed by other parties which would bear no action into four thousand six hundred obligations to pay money, executed by themselves? If they did any of these things, they *contracted* pecuniary obligations within the meaning of the law.

11. It is hardly necessary to observe that the President's proclamation of January 1st, 1863, (12 Stat. 1268), which relieved New Orleans and a few other parishes adjoining, from the disabilities of belligerents *did not* extend to the parish of Tensas and the other parishes of Louisiana above Red river, and that there is no act of Congress which suspends prescription or the statute of limitation of a Confederate State, whose courts alone had jurisdiction over the controversy between persons at war with the United States, and "to whom the State courts were open during said period," (the war), "and who, on account of their citizenship and actual residence, were not entitled, and could not be entitled, to sue in the United States courts." (Record, p. 8.)

12. Where it appears by the production of a document that the time has elapsed required by law to prescribe

against it, there is a *prima facie* case, and the burden of proof is on the party who claims under it to show the facts which relieve him from the consequences of the general law. In this case, the issue was made that Kennedy & Maxwell are citizens of Louisiana, (p. 4), and it would be just as logical to argue that Britton & Koontz lived in Tensas as it is for them to argue that Kennedy & Maxwell may have moved away.

Prescription had run. It was for Britton & Koontz to prove that the holders of the levee warrants could not cause process to be served on the police jury, for some cause named in the act of 1864, 13 Stat. 123; Stewart vs. Kahn, 11 Wal. 504.

13. Prescription commences to run from the maturity of an obligation. There is no law in Louisiana which makes it to depend on presentation for payment, as seems (by the authority cited), to be the case in Georgia. C. C., 2494. The precise point as to parish warrants, was decided in the case of Perry vs. Parish of Vermillion, 21 An. 645, 646.

14. When Kountz said that Marshall would accept bonds payable in *six* and *twelve* years, he meant to be understood, bonds running from six to twelve years, and so he was understood as is evident from the ordinance.

15. The interpolations of the judge *a quo*, in the bill of exception, (p. 17), have rendered it a little confused, as for example, when reasoning from the facts, he says, "that inesmuch as the police jury knew before issuing the "bonds, that Marshall would not accept the conditions of

"the resolutions, any representations that might have "been made by Koontz to the contrary, were immaterial, "inasmuch as said bonds were subsequently issued with a "full knowledge of the facts." Now, the proof was only what had been previously stated, and that was, that *after the close of the meeting* of the police jury, Marshall informed the president, &c., and the quotation is the reasoning of the judge. As there is no proof to show at what date the bonds were issued, nor whether the police jury met at any time before the bonds were issued; the question should have been left to the jury. Corporate bodies under the civil law, can only bind themselves by contracts, &c., when they meet in accordance with the laws.

16. Probably a distinction should be taken at common law between a case where the misrepresentation consisted in what the obligee promised to do, and a misrepresentation which consisted in falsely asserting that he had seen another party, and that other party had agreed to an important matter bearing directly on the contract. Suppose the payee of a note should obtain a surety to the same by representing that he had seen another third party who would also sign as surety, when he well knew such other had expressly refused to sign a surety. The case at bar does not stand on promise of Kountz for the future; it it was a misrepresentation of what A. P. Marshall had agreed to. Such misrepresentations vitiate contracts under the civil, and we doubt not, also under the common law.

We have thus, in a brief manner, replied to the most important matters touched upon by the brief of the learned counsel for defendants in error, and leave case upon this and our original arguments.

GEO. W. RACE AND
E. T. MERRICK.

Supreme Court of the United States

No. 190.

POLICE JURY OF THE PARISH OF TENSAS, PLAINTIFF IN ERROR,

vs.

BRITTON & KOONTZ, DEFENDANTS IN ERROR.

Brief of Counsel for Defendants in Error.

THOS. J. SEMMES,
Of Counsel for Defendants in Error.

L. Graham & Co., print, 73 Camp St., 2d floor.

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POLICE JURY OF THE PARISH OF TENSAS, PLAINTIFF IN ERROR,

vs.

BRITTON & KOONTZ, DEFENDANTS IN ERROR.

Brief of Counsel for Defendants in Error.

Britton & Koontz, citizens of Natchez, in the State of Mississippi, sue the Police Jury of the Parish of Tensas, to enforce the payment of the over due coupons on certain bonds, which were issued on 1st July, 1869, by virtue of a resolution of the Police Jury, dated 18th January, 1869.

The resolution provides, that all just claims against the Parish be now funded; that all creditors of the Parish be called on to present their claims prior to 1st July, 1869; that the President and Clerk of the Police Jury, after examination and approval of the claims presented, shall issue to the creditors the bonds of the parish, payable in six, seven, eight, nine, ten, eleven and twelve years, bearing six per cent. interest, payable annually; and that all claims not presented by the 1st July, 1869, shall be forever barred.

The resolution further instructed the Parish Attorney, to plead prescription upon any claim, if the holder should *refuse to accept the terms of funding* proposed in the resolution.

The President and Clerk of the Police Jury, who were authorized to examine, approve and settle the claims, were not required to report their action to the Police Jury, unless in case of

doubt as to the correctness of some particular claim presented. These officials were also empowered to procure bonds, with coupons attached, to be used in funding the indebtedness of the parish. See resolution, pages 9 and 10.

The plaintiff in error, in order to avoid payment of its obligations, issued under the resolution above mentioned, sets up in answer the following defences:

1st. That the resolution on its face is null and void, because it authorizes an issue of bonds, without providing the means of paying the principal and interest.

This defense is based on a statute of the State of Louisiana, approved 15th March, 1855, which enacts, that "the Police "Juries of the several parishes, and the constituted authorities "of incorporated towns and cities in this State, shall not here- "after have power to contract any debt or pecuniary liability, "without providing in the *ordinance creating the debt*, or pecu- "niary liability, the means of paying the principal and interest "*so contracted.*"

Acts of 1855, p. 326, Sec. 4 and 5.

2nd. That the bonds were issued in renewal of certain sight drafts, or orders, drawn by the Levee Inspector of the Parish, on the Treasurer of the Levee Fund, and that said drafts were, in themselves, null and void, because the ordinance under which they were issued, made no provision for their redemption.

3rd. Said sight drafts, in renewal of which the bonds were issued, were prescribed on 18th January, 1869, and therefore the Police Jury had no lawful authority to recognize and fund them.

4th. The passage of the ordinance of 18th January, 1869, recognizing and funding these sight drafts, was procured by the misrepresentation of the defendants in error, and therefore, is null and void as to them.

These four defenses, constitute the staple of the numerous bills of exceptions found in the transcript. In order properly to appreciate the case, the Court must consider the local law of Louisiana, by virtue of which the original obligations of the Parish were issued.

Those obligations are dated in December, 1860, and January, 1861, and purport to be orders, drawn at sight, in favor of Kennedy & Maxwell, for amounts due them, on account ot work done on the levees; they are drawn by the "Levee Inspector" on "the Treasurer of the Levee Fund," and are approved by the two "Ward Commissioners." Three were presented for payment, and are marked, "not paid for want of funds;" two do not appear to have been presented, and these two are dated December 17, 1860, and bear 8 per cent interest from date.

The act, under which these orders were drawn, is entitled "An act relative to the building of levees in the Parish of Tensas, and to create a special fund for levee purposes." Approved 16th March, 1848. No. 233, Acts of 1848, p. 158. This act was amended in certain particulars, not necessary to mention, by the Act of 1850, No. 66, p. 33.

The counsel for plaintiff in error, admit in their brief, p. 35, that the levee warrants in the record are drawn in due form, and drawn by the officer, and against the special levee fund, allowed by the legislation in force at the time.

The act of 1848, required the Police Jury of the parish of Tensas, to divide the parish into five wards, to be denominated levee wards; to appoint a levee inspector and engineer for the parish; to appoint, annually, in such levee ward, two commissioners, who, in conjunction with the inspectors, should lay off new levees in their respective wards; the levee inspector and engineer are directed to superintend the construction and repair of all levees in the parish, in accordance with the requisition of the Police Jury; and in payment of the work done the sixth section declares, "the inspector shall be authorized to "issue a warrant payable to the contractor, which said war- "rant shall be a legal order upon the treasurer of the levee "fund for the amount therein specified."

The Police Jury are authorized by section seven, to impose, assess and collect, an annual tax *ad valorem* on all the taxable lands in the parish, and "said tax, when collected, shall form "a special fund for levee purposes alone in the parish of Ten- "sas."

The amendments made by the act of 1850 have no bearing

on the case, so far as the legality of the levee warrants is concerned.

It is very evident, that these levee warrants were issued in conformity to special legislation in regard to the parish of Tensas; they were not issued by virtue of any *ordinance* of a Police Jury, or other municipal authority. The authority of the levee inspector to issue the warrants on the treasurer, is derived from *the act of the Legislature creating the office.* It is, therefore, manifest that the act of 1855, relied on by the plaintiff in error, has no application whatever to these levee warrants, for that act declares, that "Police Juries and the constituted authorities of incorporated towns and cities, shall not "have power to contract any debt, without fully providing in "the *ordinance* creating the debt, the means of paying principal and interest."

These warrants were not issued in virtue of any ordinance of the Police Jury; they were issued in virtue of the law, and were drawn against funds which ought to have been collected by taxation.

The Legislature, so far as the Parish of Tensas is concerned, expressly authorized the Police Jury, to levy the necessary taxes to meet the warrants drawn by the levee inspector. The law itself, which authorized the issue of the warrants, provided the means of paying them.

It is not perceived in what manner it is possible to assail the legality of the original warrants.

2d. This disposes of the second ground of defense, which is clearly devoid of legal force.

Is the first ground any stronger or entitled to greater consideration than the second? It is contended, that the resolution or ordinance of the 18th January, 1869, is void on its face, because it contains no provision for the payment of the principal and interest of the bonds and coupons, the issue of which is therein authorized.

This is the contention presented by the bill of exceptions No. 4, p. 9, wherein the plaintiff in error, excepted, because the Court below refused to charge the jury, that the resolution was void on its face, but, on the contrary, informed the jury

" that the levee warrants were valid debts against the parish, " and that the Police Jury had the power, to issue the bonds in " question, and had an undoubted right, and it was very proper " for them to postpone the indebtedness of the parish on the " levee warrants for six, seven, eight, nine, ten, eleven and " twelve years, if they thought the interest of the parish so " required."

The act of 1855 merely provides, that the *Police Jury* shall not have the power to *contract any debt*, without fully providing in the ordinance *creating* the debt, the means of paying principal and interest. The ordinance on its face does not profess to *create any debt*; it provides "that all just claims against the parish of Tensas be now funded." It is on its face, a proposition to the creditors of the parish, to renew their debts on the terms of credit proposed in the ordinance. The bonds and the coupons, but represent the levee warrants extended. The levee warrants were obligations *of the parish*, obligations created by virtue of the provisions of the acts of 1848 and 1850. Most assúredly, the Legislature, by the act of 1855, never contemplated the withdrawal from cities, towns, and other municipal corporations, the power of extending, on favorable terms, the debts due by them.

The object of the act, was to arrest the tendency of municipal corporations to extravagance, which could be safely indulged in, by using the credit of the corporation, without imposing corresponding burdens on a restive community. But after the debt is contracted, what possible motive of policy could operate on the legislative mind, to induce it to cripple the unfortunate debtor community, by prohibiting any extension of the debt thus created?

The plaintiff in error, however, contends that the Police Jury were not vested *with power* to make levee contracts; that they were only authorized to levy a tax in order to create a special fund, against which the levee inspectors could draw, and, therefore, the ordinance which authorized the issue of the bonds, in fact created a new obligation, and was not an arrangement for the extension of an old one. The political entity, which becomes liable for a debt created by the parochial

authority, is the parish or rather the people of the parish. It matters little, through what agency, a debt for the *parish* is created, whether through the agency of the Police Jury, or the levee inspector, or any other official. If any officer is authorized to bind the parish, the obligation created by him becomes a liability of the parish. In the case at bar, the levees were constructed and repaired under the management and control of officers appointed by the Police Jury, and the fourth section of the act of 1848 expressly declares, "It shall be the duty of "the levee inspector or engineer, to direct and superintend the "construction and repairs of all levees in said parish of Ten-"sas, *in accordance with the requisition of the Police Jury of the* "*parish*, etc." The act of 1850 has in no way amended this section.

Simply because the fifth and sixth sections, as amended in 1850, require the Levee Inspector, without the intervention of the Police Jury, to cause a survey of all the levees to be made at the expense of the parish, to be deposited in the office of the Clerk of the Police Jury, and to let out contracts after advertisements, to the lowest bidder, etc., the learned counsel for the plaintiff in error argue, that the levee warrants, issued for work done under the contracts, are not debts obligatory on the Police Jury. Whether obligatory on the Police Jury or not, we consider immaterial; they are debts of the parish, and the Police Jury were required to levy taxes to meet the warrants. The truth is, however, the fourth section of the original act, reserved to the Police Jury a control over the levees, and the contracts of the inspector were the contracts of the Police Jury.

But, it is urged, that although the debt was lawfully created in 1860; the control over the levees of the State having been withdrawn from the Police Jury by subsequent legislation; no arrangement for the liquidation, or extension of these levee warrants could lawfully be made by the Police Jury. We cannot perceive that the conclusion is a logical deduction from the premises. Admit that subsequent legislation has denuded the Police Jury of the power to build or repair levees, or to contract for the same; this is not a case which originated posterior to the acts of

1866, 1867 and 1868, quoted by the learned counsel for the purpose of establishing their premises. The legislation of those acts is prospective; it provides in the future for the construction and repair of levees. It has not, and was not intended to have any retro-active effect; it did not, and could not affect or impair any debt or obligation created by virtue of previous legislation. Concede that the legislation alluded, to has withdrawn from the Police Jury, the power to levy the special tax on lands provided for in the acts of 1848 and 1850.

The withdrawal of the power of using a special mode of raising money to pay a debt, does not impair the debt. It is still a debt of the parish, and the abolition of the power of special taxation, leaves the debt a general debt, to be provided for like other debts of the parish. The learned counsel confound the origin of the debt, and the means provided for its payment, with the validity and existence of the debt itself. The change in the powers of the Police Jury, cannot affect a debt created before the change was made; if the learned counsel can produce any act of the Legislature of Louisiana prohibiting the Police Jury from making arrangements for the payment of the debts of the parish, created prior to the war, they might with some hope of success, turn to posterior legislation in aid of their cause. The only effect the repealing laws could by any posibility produce, would be, to arrest future contracts, and future special taxation; the legal obligations issued prior to the repeal, would still subsist as valid legal obligations of the parish. The Police Jury might not have the power to levy a special levee tax to meet the obligations, but the obligations would be debts of the parish, to be provided for by its municipal authority.

Were it material, we would enter into the discussion of the question, whether the acts of 1866, 1867 and 1868 establishing a Board of Public Works, repealed the special legislation in reference to the parish of Tensas. The act of 1848 is entitled "an act relative to the building of levees in the parish of Tensas, and to create a special fund for levee purposes." In all other parishes of the State, unless special legislation varied the rule, the front proprietor was required to construct and

maintain the levees; if he failed to do so, the Police Jury was authorized to build, and keep them in repair at his expense. To this end, the Police Jury were specially authorized to sue "any person for whose account levees, &c., may have been made or repaired."

Revised Statutes of 1855, p. 410.

But as early as 1847, the Police Juries of the river parishes of the State, were authorized to levy "a special tax on land for the construction and support of levees."

Acts of 1847, page 82, section 8.

This provision was re-enacted in 1855, and is the law to-day.

Revised Statutes of 1870, section 2, p. 44.

The case of Tardos vs. Police Jury, 22 Ann., p. 58, merely decides, that the acts of 1866 and 1867 relieved the front proprietor, from the burden of building or maintaining the levees. In the case not yet reported, but referred to in the brief of counsel for plaintiff in error, the Supreme Court merely re-affirm the doctrine of the Tardos case. After stating, that the case before them presented a stronger claim for relief than the Tardos case, they say, that "for the reasons stated in that decision, we sustain the decision of the lower Court in the present case." It is true, the Police Jury of the parish of Point Coupee was made in that case, a co-defendant with the front proprietor, and the judgment of the inferior Court, affirmed by the Supreme Court, was as to the front proprietor an absolute judgment, releasing him from all liability; but as to the Police Jury, it was a non suit, thereby allowing the plaintiff an opportunity to renew his suit. There was a plea of misjoinder of parties, and the Supreme Court considering the plea valid, may have, on that ground, sustained the judgment of the inferior Court in toto. Certain it is, that the language of the decision conveys no idea, that its scope differs from that rendered in the Tardos case.

Besides, the parish of Point Coupee was not governed by special legislation, similar to that enacted in 1848, relative to levees in the parish of Tensas.

We do not enter more minutely into this question of repeal, because as we have said, we consider the discussion immaterial.

In our view of the case, the debt was legitimately contracted by the issue of the warrants, in accordance with law in the years 1860 and 1861; the subsequent legislation may deprive the Police Jury of the control of the levees, without in any manner affecting the debt previously created, or the power of the Police Jury to settle it. The power of the Police Jury to acknowledge, and settle an honest debt, we presume will not be questioned. It is a power inherent in every corporation as a legal entity; "for corporations legally established are substituted for persons." C. C., Art. 424.

Hence, every corporation has a right to sue; to make valid contracts; obligate others, and obligate itself towards others etc. C. C., 424.

In the language of Angell and Ames, on Corporations, Sec. 6, a corporation "is governed by the existing laws in force at "the time of its creation, in reference to ownership of property, "and the contracting of obligations, in the same manner as "natural persons, except in so far as such laws are modified or "changed by its charter."

Hence, the power of the Police Jury to issue a note in settlement of a bona fide and legitimate debt, or its power to acknowledge a debt, or waive prescription, cannot be questioned, because the law organizing these juridical persons do not prohibit the exercise of these powers, which are common to all the inhabitants of the State. If the learned counsel for the plaintiff in error, contend that the Police Jury is without power to issue negotiable bonds in settlement of a valid debt of the Parish, the contention is not sustained by reason or authority.

The cases mentioned in appellant's brief, by no means sanction the doctrine, in support of which they are cited.

In Breaux vs. Police Jury, 23 Ann., 235, the Court merely held, that the obligation cannot be *created* by the issue of bonds. The parish desired to raise money; it issued its bonds for the purpose, without legislative authority. The Court is careful to state: "This is not an action for work done, or supplies "furnished to the Parish of Iberville, *of the value of which the "note in suit is merely sought to be used as evidence.*"

The plaintiff in error, by its answer to this suit, invited an inquiry into the consideration for which the bonds in question were issued; the answer concedes that the bonds were delivered in settlement of levee warrants; they are a renewal of the levee warrants. The case of Marionneaux, 20 Ann. 251, decides, "that the power to borrow money or issue bonds as a means "of raising it, has not been conferred on Police Juries."

The Natchitoches case, 23 An., page 190, declares, that no law permitted that parish to issue bills of credit for *circulation as money*. The other cases are similar, and no authority can be produced to the effect, that a Police Jury is debarred from giving its notes in settlement of debts or legal obligations.

The case of Floyd's acceptances, 7 Wallace, p. 682, so far from contradicting the views presented by us, support them. The Court admitted, that under some circumstances the Government would be bound by the issue of bills of exchange by its officers, although the authority to issue them was not given by statute; as, when it is the duty of an officer to pay money at a distant point, or when an officer at a distance from the seat of government, is entitled to money in Washington. In either event the officers might draw a bill and bind the government. The decision was put on the ground that the bills in question were *accommodation paper*, and they were a *loan of the credit* of the Government, without consideration and without authority.

In the case of Thomas vs. City of Richmond, 12 Wallace, 357, small bills of the city of Richmond were issued to circulate as currency, in violation of the laws of Virginia, and the curative statute, which required the city to redeem the bills, was passed by a legislature not recognized by the United States, and in aid of the rebellion, and therefore void. Even if the bonds issued by the parish of Tensas were void for want of authority, the defendant in error would be entitled to recover the value of the warrants surrendered in lieu of the bonds, on the principle maintained by the Supreme Court of New York in the case of the Oneida Bank vs. Ontario Bank, 21 New York, 496, cited with approbation in the Richmond case above mentioned. These levee warrants are withheld, and have never

been tendered to the defendants in error. How can the parish withhold the warrants and set up want of authority to issue the bonds delivered in lieu of them? It is estopped. Pendleton County vs. Army, 13 Wallace, 298.

All corporations, public or private, may issue a note for a debt contracted in the course of its proper business, 4 Hill, N. Y., 263; Kent's Com. p. 290 (n) a.

A corporation may fund a valid debt and issue its bonds therefor without express authority. Galena vs. Corinth, 48 Illinois, 423.

3d. It is contended that the levee warrants issued in 1860 and 1861 were prescribed on 18 Jan., 1869, and therefore the Police Jury had no authority to recognize and fund them. We know of no law prohibiting the municipal authorities of Louisiana from acting honestly. There are many statutes passed to secure integrity. It is true, the Supreme Court of Louisiana has said, that a corporation having no soul, is but the better fitted to plead prescription.—11 Ann. 212. Every debtor is at liberty to plead prescription, no law compels him to do so. The rule is as applicable to juridical as to natural persons. The recognition of a prescribed debt, is not the creation of a new one; it is but the renunciation of prescription; and the effect of prescription is to discharge the debtor from all *actions* real or personal.—C. C., Art. 3494. But a claim on which a suit cannot be brought, because prescribed, may be pleaded in compensation, or by way of offset.—2 La., 386; 6 Ann., 102.

"When an action is barred by prescription a natural obligation still subsists, altho' the civil obligation is extinguished." C. C., 1751.

"A natural obligation is one which cannot be enforced by *action*, but which is binding on the party who makes it, in conscience, and according to natural justice."—C. C., 1750.

The case of Seibrecht, 12 Ann. p. 496, merely decides that a municipal corporation cannot be bound for any contract, made without its authorization, expressed by resolution of the Common Council; and that it has not the power of contracting on all subjects like persons of full age and sui juris. These propositions no one disputes.

The cases of the Succession of Jounson, 4 Ann., 253, and McDonell, 4 Ann., 543, merely decide, that a tutor without being specially authorized, cannot execute a note in his capacity of tutor so as to bind the minor.

The case of McAllison in 14 Ann., 617, is merely a decision as to the *form* in which prescription must be interrupted or renounced by an administrator, not as to the *power*.

It is useless however to pursue this subject further, because the levee warrants were not prescribed. The defendants in error were citizens of the State of Mississippi, resident at Natchez. The Court will take judicial notice of the fact, that Natchez was during the greater part of the war in possession of the military forces of the United States, and that the Mississippi river was under the control, and in the possession of the naval forces of the government, from the surrender of New Orleans in April, 1862, until the termination of the war. The Mississippi river traversed day and night by hostile steamers, was a barrier between Natchez, and that part of Louisiana, west of the Mississippi river. According to the opinion of this Court expressed in the case of the Protector, 12 Wallace, 701, the war began in Louisiana and Mississippi, 19th April, 1861, and terminated 2d May, 1866; if the period from the surrender of New Orleans—1st May, 1862—to 2d May, 1866, be rejected, it is perceived that on 18th January, 1869, the levee warrants were not barred by the prescription of five years. The Court will observe in considering this question of prescription, that it is not set up as a plea to *our right of action*, or to this suit brought by us, but it is urged merely as a defence to the merits; it is contended that on 18th January, 1869, the levee warrants were prescribed, and therefore no *debt existed* which could be funded, and the Police Jury which recognized these prescribed obligations, had no power to make the recognition, and therefore the bonds in question, not being the evidence of an old debt, are void as new obligations, for the payment of which the ordinance has made no provision.

If, therefore, the Police Jury had the power to recognize and provide for the payment of a prescribed debt, the fact whether the levee warrants were or were not prescribed on the 18th

January, 1869, is unimportant, and the instruction given or refused on that point, immaterial.

But those instructions are sustained by the decisions of this Court, in the cases of Hanger vs. Abbott, 6 Wallace, 540, and Stewart vs. Kahn, 11 Wallace, 500.

The Court having charged the jury, at the request of the defendants in error, as is stated in the fifth bill of exceptions, "that the levee warrants were not prescribed on 18th January, 1869," it is immaterial, whether the instruction asked for by the plaintiff in error on the same subject, and refused by the Court as set forth in bill of exception No. 2, is critically correct or not. Besides, the instruction as prayed for, was hypothetical, and not justified by the facts adduced in evidence. The only evidence adduced as to the citizenship or residence of Kennedy and Maxwell, the original payees of the levee warrants, refers to their citizenship and residence *at the time the levee warrants were issued.* See Bills of Exceptions, Nos. 2 and 6, pp. 8 and 14. Neither bill of exception states, that there was evidence adduced to the jury as to the citizenship or residence of Kennedy and Maxwell, during the period of the war, or during the interval between the issue of the levee warrants, and 18th January, 1869. They were levee contractors, and perhaps, on the breaking out of the war, withdrew to the loyal States, or removed to New Orleans after its surrender in April, 1862. At all events, that material link in the chain of evidence is wanting. The Court will intend that the record contains all the evidence on the point.

5 Howard, 278; 17 Howard, p. 6.

Every bill of exception must be considered as presenting a distinct substantive case, and it is only upon the evidence stated therein, the Court will decide.

7 Cranch, 242; 22 Howard, 207.

Although the Judge declares in the bill of exceptions, No. 10: "That whatever is certified in one bill of exceptions shall so "far as applicable be taken as explanatory of the others," page 17; yet there is no reference to any evidence, as to the citizenship and residence of Kennedy and Maxwell, in any of the bills of exception, save that set forth in No. 6, page 14, as follows:

"The evidence introduced tending to show that Kennedy and "Maxwell were levee contractors, and resided in the Parish of "Tensas and State of Louisiana, and in said capacity they re- "ceived the several levee warrants, etc., and they transferred "said warrants to Britton & Koontz, and that Britton & "Koontz surrendered said warrants to the Police Jury of "Tensas in 1869," etc.

The residence and citizenship of Kennedy and Maxwell in the interval, between the date of the warrants and 18th January, 1869, are not proved, nor is the time of the transfer to Britton & Koontz mentioned.

Hence the Court properly refused the instruction, that if Kennedy and Maxwell resided in Louisiana *at the time they received the levee warrants*, Britton & Koontz as transferees could not institute suit in the Circuit Court, p. 14. It is true the Court assigns as a reason for refusal, that suit was brought on the coupons and not on the levee warrants, but it might have suggested, the additional reason, that there was no evidence that the payees, Kennedy and Maxwell, resided in Louisiana at the time of suit brought, or at the time of assignment to Britton & Koontz, *or at any time after the warrants were issued to them.* 6 Peters, p. 20; 6 McLean, 68.

It is unnecessary to cite authority for the purpose of showing, that the burden was on the plaintiff in error, to establish the facts necessary to make good the allegation, that the levee warrants were prescribed on 18th January, 1869; the opinion of the Parish Attorney referred to in the third bill of exceptions, p. 13, will not be accepted by this Court as infallible. At all events, it is clear that the warrants drawn in 1869 are not prescribed, because there is no evidence they ever were presented for payment, and until presentation prescription does not commence to run against such warrants.—Justices vs. Orr, 12 Ga., 137.

4. The last defense is as stated in the answer: "that said "ordinance of 18th January, 1869, was obtained by misrepre- "sentation and error, induced by said Koontz, by representing "that A. P. Maxwell, a principal creditor of said parish, would "accept said resolution."

It is not alleged that the *bonds* were issued in error, or procured by misrepresentation. The ordinance was passed 18th January, 1869; the bonds were not issued until 1st July, 1869; they bear date on that day; the bond offered in evidence, as a sample of those to which the coupons sued on were attached, has a revenue stamp "cancelled 1st July, 1869"—see p. 1—and the resolution contemplated, that bonds were not to be issued until all creditors presented themselves, and they were allowed until 1st of July for that purpose. We, therefore, assume the bonds were delivered to defendants in error, on the day they bear date, 1st July, 1869.

It appears from the bill of exceptions (No. 11) that one A. P. Marshall, held an unprescribed claim against the Parish of Tensas, amounting to $80,000 or $90,000; that Koontz, one of the defendants in error was, on 18th January, 1869, in the town of St. Joseph, where the Police Jury held its sessions, and informed the Police Jury that he had seen A. P. Marshall, and that he and Marshall agreed to accept bonds, payable in six and twelve years, in full satisfaction of their claims; it also appears that Marshall testified he never agreed to accept such terms, and never informed Koontz that he would come in under such resolution, or anything like it. Tullis, the President of the Police Jury, stated that the acceptance of Marshall was the inducement to pass the resolution of 18th January, 1869, and that it would not have been passed, had not the Police Jury trusted to the assurance and statement of Koontz, that Marshall would accept the terms of the resolution; Marshall, however, further mentioned in his testimony, that he also was present in the town of St. Joseph on the 18th January, 1869, and within fifteen minutes after the resolution was passed, informed the President, and some other members of the Police Jury, that he would not accept the terms of the resolution. The bill of exception proceeds to state, "that in as much as "the Police Jury knew, *before issuing said bonds*, that Marshall "would not accept the conditions of the resolution, any repre- "sentations that might have been made by Koontz, to the con- "trary, were immaterial, as said bonds were subsequently "issued with full knowledge of all the facts," and the Court,

when requested to charge the Jury, that if they believed the passage of the ordinance was procured by the misrepresentation of Koontz, the plaintiffs were not entitled to recover, refused to give the charge in the language requested, but instructed the jury, that as the plaintiffs had just demands against the parish, the mere statement that certain other creditors would come in under the resolution, would not invalidate the resolution or the bonds, and that nothing but a fraudulent and corrupt misrepresentation, *by which an advantage in the substance* of the contract was obtained, would avoid the same.

We call attention to the fact, that the alleged misrepresentation made by Koontz was, that Marshall would accept bonds, payable in *six and twelve years;* whereas, the resolution as passed, authorized the issue of bonds, payable in six, seven, eight, nine, ten, eleven and twelve years; and Marshall merely denies any agreement to accept bonds in six and twelve years, or anything like it.

It is next to be observed, that the resolution was passed 18th January, 1869, the bonds were not issued under it until nearly six months afterwards, and with full knowledge of the alleged error, as to the acceptance by Marshall of the terms proposed in the resolution. And it is not at all probable, that Koontz would intentionally misrepresent the views of a large creditor of the parish, in the very presence of the creditor himself, who at the time was in the same village, and personally accessible to the members of the Police Jury, and therefore in a situation to immediately correct, as he did, any erroneous statement made respecting the terms on which he was willing to settle his debt. No fraud is charged, no injury done; the error, if error it be, was immediately corrected; yet the resolution was not repealed until June, 1870, long after the bonds were issued under it. This repealing resolution, p 19, attempts to justify, in part, the action of the Police Jury, on the ground that the levee warrants were prescribed, and therefore the Police Jury *had no right to revive them* without consulting the people of the parish.

Mr. Marshall stated, that, within fifteen minutes after the resolution was passed, he informed the president of the Police

Jury, and some other members of the Jury, that he would not accept the terms of the resolution.

Yet Mr. Eli Tullis, who was president of the Police Jury, and who, with the clerk, under the terms of the resolution, was authorized "to examine and approve the claims, and, ap- "proving them, to issue the bonds," p. 10, did examine and approve these warrants, notwithstanding the knowledge that Marshall had refused to accept the resolution, and did, six months afterwards, sign and deliver the bonds to Britton & Koontz. The coupons are signed by "Eli Tullis, President Police Jury," pp. 19 and 20. Under these circumrtances, the charge of the Court was manifestly correct, and the refusal to charge, in the absolute and naked manner desired by the plaintiff in error is justified. The Court was asked to charge the jury, that if they believed the ordinance was procured by misrepresentation of Koontz, one of the plaintiffs, as set forth in the defendant's answer, that then the plaintiffs are not entitled to recover.

This instruction, ignored altogether the fact, that within fifteen minutes after the resolution was passed, the President and other members of the Police Jury were informed by Marshall, that he would not accept the provisions of the resolution, and the additional fact that the bonds were delivered to plaintiffs, with full knowledge that Marshall had declared his unwillingness to accede to the proposed extension of his debt. The instruction as given is correct; namely, "that the mere "statement that certain other creditors of the parish *would* "(if the resolution should be passed) come in under the resolu- "tion and grant a delay, would not invalidate the resolution or "the bonds issued under the same, and that nothing but a "fraudulent and corrupt misrepresentation by which an advan- "tage in the substance of the contract was obtained, would "avoid the same."

It is doubtful whether any misrepresentation whatever as to the future intention of others, will vitiate a contract.

First vs. Hill, 15 C. B., 207 (80 E. C. L.) Jordan vs. Monq, 5 H. L., Cos. 185.

A representation of an intention, in order to affect the party making it, must amount to an engagement.

Hammasley vs. Dr. Biel, 12; Clark & Finnelly, 45.

Marnsel vs. Hodges, 4 H. L. Cas., 1056.

The defendants in error do not pretend to support the validity of the bonds in question, by appealing to the act of 1860, a copy of which is annexed to the brief of counsel for the plaintiff in error.

The allowance of five per cent. interest on the coupons is strictly in accordance with law. The consideration for which the coupon is issued, is the interest on the principal debt. But the coupon is a distinct and independent obligation, and hence suit can be brought on the coupon alone. The act of 1855, re-enacted as section 1883 of Revised Statutes of 1870, provides, "that all debts shall bear interest at the rate of five per cent. per annum from the time they become due, unless otherwise stipulated." The article 1934 of the Civil Code merely provides for the ordinary case of an interest-bearing debt, where the interest is not, in the creation of the debt, separated from the principal by contract; in that event the interest will not bear interest, unless a new agreement is made, converting the interest into principal. Where coupons are issued with bonds, our Supreme Court have held—"that in each bond, the interest was not merely an *accessory* to the principal debt, but a substantive part of it, and constituted a main portion of the value of the bond itself, as well as the principal inducement to its purchase."

La. Bank vs. Navigation Co., 3 Ann., p. 312.

That such coupons bear interest under the general law, is well settled.

Robbins vs. County Court, 3 Mo., 57.

Rogers vs. Lee County, 1 Dillon, C. C. R., 529.

The interest allowed by the jury in this case is five per cent. from the date of the institution of the suit.

Respectfully submitted,

THOS. J. SEMMES,

Of Counsel for Defendants in Error.

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